



April 18, 2022

Submitted via email to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. S7-02-22; 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 (Release No. 34-94062; File No. S7-02-22)**

Dear Ms. Countryman:

BrokerTec Americas LLC (“BrokerTec”), on its own behalf and on behalf of CME Group Inc. (“CME Group”)<sup>1</sup>, of which it is a wholly-owned subsidiary, appreciates the opportunity to comment on the Securities and Exchange Commission’s (“SEC” or “Commission”) proposal to amend Regulation ATS<sup>2</sup> for alternative trading systems (“ATSS”) and related SEC rules with respect to ATSS that trade government securities or repurchase and reverse repurchase agreements on government securities (“Government Securities ATSS”) (the “Proposal”)<sup>3</sup>.

BrokerTec is registered as a broker-dealer with the Commission and is also a member of FINRA. BrokerTec’s primary offering is a fully electronic trading platform that provides a central limit order book for the trading of U.S. Treasury securities to the professional trading community of banks, dealers, and proprietary trading firms. BrokerTec also offers a direct streaming platform for U.S. Treasury securities and an RFQ platform for repurchase agreements involving U.S. Treasury securities.

There can be no doubt that the secondary trading markets for government securities are vitally important to the U.S. economy. It is therefore necessary to have an appropriate regulatory framework which supports these markets. For that reason, BrokerTec supports the Commission’s rationale for bringing

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<sup>1</sup> As a leading and diverse market operator, CME Group enables clients to trade in exchange-listed futures, cash and over-the-counter markets, optimize portfolios, and analyze data – empowering market participants worldwide to efficiently manage risk and capture opportunities. CME’s futures exchanges offer the widest range of global benchmark products across all major asset classes based on interest rates, equity indexes, foreign exchange, energy, agricultural products, and metals. CME Group offers futures trading through the CME Globex platform, fixed income trading via BrokerTec, foreign exchange trading on the EBS platform, and central counterparty clearing services at CME Clearing, a division of CME.

<sup>2</sup> See 17 C.F.R. § 242.300 *et. seq.* (2020).

<sup>3</sup> See 87 FR 15496 (March 18, 2022) (the “Proposing Release”).

forward this Proposal, namely, to update regulations to reflect the increasingly important role that Government Securities ATSS occupy in the secondary trading market for government securities. However, we offer the below suggestions, which we believe will allow the Commission to implement this purpose most effectively.

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As an initial matter, we support the Commission's decision to re-propose amendments that would eliminate many current exemptions from compliance with Regulation ATS for an entity that limits its securities activities to government securities or repurchase and reverse purchase agreements on government securities ("repos").<sup>4</sup> The underlying reasons why these exemptions were initially adopted for government securities platforms decades ago have disappeared. The U.S. Treasury markets have seen significant market structure changes and electronification since that time. Applying the full scope of Regulation ATS to Government Securities ATSS rather than exempting them is a prudent measure.

#### Delete Fair Access and Regulation SCI Volume Thresholds

However, we do recommend that the Commission reconsider one specific aspect of its proposal with respect to the scope of application. The Commission proposes to apply two important requirements only to certain platforms meeting pre-set volume thresholds: (1) the requirement to comply with the "fair access" rule ("Fair Access"); (2) and the requirement to meet the SEC's Regulation Systems Compliance and Integrity regulations ("Regulation SCI"). Only platforms that have traded certain amounts of U.S. Treasury or Agency Securities would be subject to these important provisions.

This necessarily means that platforms with volumes below the thresholds would not have to comply. In our view, this possibility is likely to create unnecessary competitive imbalances. Firms would be incentivized to structure their operations to avoid these requirements where possible. Under the current proposal, we think it is feasible that, due to the small number of ATSS that would be covered under these restrictions, liquidity and participation would become more dispersed across numerous smaller venues. Many different smaller venues could remain under the threshold requirements eventually resulting in the market having an increased number of ATSS, few of which are subject to Regulation SCI or Fair Access. This result would defeat the purpose of applying these important protections to the U.S. Treasury markets in the first place.

Additionally, based on the current proposal, aggregation of those affiliated ATSS to calculate those thresholds only apply to Fair Access and not to the application of Regulation SCI, which further complicates the operational landscape and provides additional opportunities for ATSS to deem themselves not covered.

The Commission has brought forward this rulemaking for the stated purpose of bolstering resilience of secondary market trading in the U.S. Treasury markets. This policy justification has been used to justify applying these regulatory requirements to platforms over the volume thresholds. But the Commission should apply all these important provisions uniformly to all Government Securities ATSS.

We think a uniform approach is particularly important for Regulation SCI because of the significant costs of compliance. It is worth noting that we initially argued that the Commission would be better served with a more targeted approach to achieve its policy objectives in the information security area.<sup>5</sup> We felt such

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<sup>4</sup> The Commission initially proposed many aspects found in the current Proposal when it initially issued a separate proposed rulemaking in late 2020. [See](#) 85 FR 87106. The current proposal that is the subject of this letter features several elements that were proposed by the Commission in substantially similar form, some elements that have been amended, and certain other entirely new proposed rules. The current proposal to eliminate longstanding exemptions for ATSS which limit activities to government securities transactions closely matches what the Commission initially brought forward in 2020.

<sup>5</sup> [See](#) February 26, 2021 Letter from Kathleen Cronin, Senior Managing Director, General Counsel and Corporate Secretary CME Group in Comment File No. S7-12-20. Our view after the Commission released its initial proposal,

an approach would be more in keeping with the Commission's own historical precedent of taking incremental steps in this area.<sup>6</sup> However, given that the Commission has now re-proposed Regulation SCI in its entirety, rather than simply applying the Regulation ATS equivalent to Government Securities ATSS as we advocated, we think it is even more important to apply Regulation SCI uniformly to all Government Securities ATSS, regardless of volumes, to avoid adverse competitive consequences. If only higher volume Government Securities ATS would become subject to Regulation SCI compliance costs, then lower volume systems will necessarily have a lower cost structure which they can use to attract business. This could ultimately have the perverse effect of pushing business away from Regulation SCI compliant platforms.

The Commission itself has acknowledged 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."<sup>7</sup> We therefore recommend the Commission apply Regulation SCI to all platforms which are required to operate as ATSS. A uniform application could help the Commission ensure there are "appropriate safeguards" in place for all Government Securities ATSS to address the potential for the types of "technological vulnerabilities" that can occur on large or small platforms and can lead to "failures, disruptions, delays, and intrusions which could place government securities market participants at risk and interfere with the maintenance of fair and orderly markets".<sup>8</sup>

#### Simplified Disclosure for Multiple ATSS

The Commission's proposal currently prohibits a firm from offering an ATS with both U.S. Treasury securities and other securities (e.g. corporate bonds, foreign government bonds, etc.). A platform offering different products in differing formats would be called on to file separate Form ATSS and/or ATS N disclosure documents to meet the prescribed requirements. For a firm with an offering like BrokerTec, we estimate the need to file several different Form ATSS and/or ATS Ns, each describing various distinct product offerings though all similar in nature.

A central purpose of the proposed Form ATS filing, and the separate ATS-N disclosure requirements, is to provide transparency regarding ATS practices to market participants. Multiple different Form ATS disclosure filings for a single entity may not effectively serve that purpose. Instead, we believe operators of ATSS should be permitted the option of making a single disclosure filing, based on execution methodology or systemic commonality, which comprehensively covers all applicable products and required topics to the most transparent requirement (ATS-N presumably). Mandating separate filings is less efficient, is operationally challenging, and is potentially confusing to participants – and it comes without any discernible benefit that we can see.

#### Provide Sufficient Time for Technology Builds

which remains our view now, is that applying current Regulation ATS Rule 301(b)(6) to Government Securities ATSS rather than Regulation SCI is still the appropriate first step. Although current Rule 301(b)(6) has a narrower scope, it is a better fit than Regulation SCI, which was designed with different types of infrastructure in mind (e.g., stock exchange SROs, order routing, transaction reporting, etc.).

<sup>6</sup> Our initially recommended approach would have also allowed Government Securities ATSS, which have not previously been subject to Commission oversight of their core technology, to cycle through the Regulation ATS examination process and thus gain a better understanding of the Commission's expectations in this area. It would also provide these entities an opportunity to demonstrate to Commission staff that their existing systems and safeguards satisfy the Commission's resiliency objectives. For example, BrokerTec's trading technology is already subject to a control framework that governs its development, capacity, integrity, resiliency, availability and security. This framework was designed to meet the CFTC's system safeguard requirements, a separate set of industry leading information security standards. A more flexible framework like current Rule 301(b)(6) would serve the Commission's policy objectives of applying appropriate regulatory standards and oversight in this area while also allowing registrants more flexibility to develop efficient approaches that fit their circumstances.

<sup>7</sup> See Proposing Release at page 15529.

<sup>8</sup> Id.

Finally, we generally urge the Commission to be mindful of the significant compliance lift that will be associated with implementing regulatory changes of the magnitude that the Commission is proposing. For example, when the Commission initially adopted Regulation SCI, many of the entities that initially became subject to it were already complying with the SEC's longstanding ARP review policy. This is not the case in the Treasury markets and therefore longer compliance and phase-in dates are justified. As such, we think it is justified to suggest that the Commission provide the marketplace with a minimum of 24 months' time for the operational build out in this circumstance prior to enforcing compliance. The secondary market for government securities is one of the most liquid markets in the world - it is important to preserve its status as such and allow firms sufficient time for the build out of these complex technology projects.

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BrokerTec appreciates the opportunity to submit these comments to the Commission and looks forward to working with the Commission to enhance the transparency and strengthen the resiliency of the government securities market.

Regards,



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Executive Director, Chief Compliance Officer BrokerTec Americas LLC  
CME Group