



February 26, 2021

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

Re: Regulation ATS for ATSS that Trade U.S. Government Securities, NMS Stock, and Other Securities; Regulation SCI for ATSS that Trade U.S. Treasury Securities and Agency Securities; and Electronic Corporate Bond and Municipal Securities Markets; Release No. 34-90019; File No. S7-12-20

Dear Ms. Countryman:

BrokerTec Americas LLC (“BrokerTec”), on its own behalf and on behalf of CME Group Inc. (“CME Group”),¹ 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 ATS² 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”).³

BrokerTec is registered as a broker-dealer with the Commission and is 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. BrokerTec averages

¹ 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. With a range of pre- and post-trade products and services underpinning the entire lifecycle of a trade, CME Group also offers optimization services through TriOptima, and trade processing and reconciliation services through Traiana.

² See 17 C.F.R. § 242.300 *et. seq.* (2020).

³ See 85 Federal Register 87106 (December 31, 2020) (the “Proposing Release”).

approximately 100,000 trades per day with an average total volume (single sided) of approximately \$150 billion per day.

I. General Comments

BrokerTec agrees with the Commission that the secondary trading markets for government securities are vitally important to the U.S. economy and that it is important to have an appropriate regulatory framework which supports these markets. Accordingly, BrokerTec supports the broad policy themes underlying the Proposal, namely, to update Regulation ATS to reflect the increasingly important role that Government Securities ATSS occupy in the secondary trading market for government securities, and to enhance the transparency and strengthen the infrastructure of this market. In this regard, BrokerTec generally supports the following changes that the Commission is proposing:

- Amending Regulation ATS to require a trading platform that limits its activity to government securities (as defined in Section 3(a)(42) of the Securities Exchange Act of 1934 (the “Exchange Act”)) (hereafter, “Government Securities”) to comply with the substantive requirements in Rule 301(b) through Rule 304 of Regulation ATS in order to qualify for an exemption from registration as a national securities exchange.
- Amending Regulation ATS to require a Government Securities ATS to file a public Form ATS-G which discloses certain information about its manner of operations and the related activities of the operator thereof.
- Amending Regulation ATS to require that all sponsors of a Government Securities ATS be members of a self-regulatory organization (“SRO”).

With that said, it is important to ensure that any large-scale rulemaking is well tailored, fit for purpose and weighs the cost of regulation against the potential benefits to be achieved. The secondary market for Government Securities is one of the most liquid markets in the world, and it is important to preserve its status as such. Thus, the Commission should proceed incrementally and with caution when considering whether to impose significant new requirements onto the U.S. Treasury securities market. In this regard, BrokerTec has concerns that the proposed changes to SEC Rule 3a1-1 and Regulation SCI are unnecessary to achieve the Commission’s objectives, would be costly to implement without providing any discernible benefit, and could disruptively harm the vibrant secondary market for Government Securities that exists today. Our comments on these aspects of the Proposal are set forth below.

II. Potential Exchange Registration Requirements

Rule 3a1-1(a) exempts certain persons from the Exchange Act's definition of "exchange," including ATSS that comply with the substantive requirements of Regulation ATS and ATSS such as Government Securities ATSS that currently are not subject to those requirements. Rule 3a1-1(b) contains an exception under which the Commission may require an ATSS to register as a national securities exchange if its average dollar trading volume reaches certain trading volume thresholds in certain prescribed classes of securities. This exception does not currently apply with respect to Government Securities.

The Proposal would amend Rule 3a1-1(b)(3) to add Government Securities to the list of classes of securities subject to the exception. If amended as proposed, a Government Securities ATSS that is exempt from the exchange definition under this Rule would lose the exemption and thus have to register as a national securities exchange if: (x) during three of the preceding four calendar quarters, it had (i) fifty percent or more of the average daily dollar trading volume in any security and five percent or more of the average daily dollar trading volume in any class of securities; or (ii) forty percent or more of the average daily dollar trading volume in any class of securities; and (y) the SEC determines after notice and opportunity to respond that the exemption from the exchange definition is not necessary or appropriate in the public interest or consistent with the protection of investors.

In response to the Commission's query whether it should add Government Securities to the existing list of classes of securities set out in Rule 3a1-1(b)(3), the answer is no, for several reasons. First, it is not necessary to require a Government Securities ATSS to register as a national securities exchange to achieve the Commission's goal of increasing the operational transparency of such ATSS. The Commission can accomplish that goal more directly and effectively by amending Regulation ATS, as it is proposing. We appreciate that, as SROs, exchanges must adopt rules, make their rulebooks public and submit rule filings to the Commission, but we question how valuable those opaque sources of information would be to investors to aid their understanding of how an exchange for Government Securities would operate. The disclosures that a Government Securities ATSS would have to provide on proposed Form ATS-G are far more informative and would far better promote meaningful operational transparency.

Second, we are concerned that amending Rule 3a1-1(b)(3) as proposed would misleadingly suggest that U.S. Treasury securities can viably be traded on an exchange. We believe that it is neither practical nor feasible for this to occur. In this regard, we note that no national securities exchange offers U.S. Treasury securities for trading.

Developing appropriate listing standards to define a sufficiently broad class of U.S. Treasury securities to support exchange trading is likely one major obstacle. U.S. Treasury securities are represented by innumerable CUSIP numbers covering securities with widely divergent characteristics such as tenor, coupon rate, on-the-run or off-the-run, etc. In short, U.S. Treasury securities do not comprise a single homogenous class of securities, nor can they be grouped readily into broad subclasses of securities that would lend themselves to exchange-trading in the actual securities, when investors often seek to purchase specific Treasury securities by CUSIP.⁴ In contrast, where the exchanges seek to offer investors the opportunity to invest in U.S. Treasury securities, they have done so by listing ETFs, which standardize the underlying basket of securities.

Further, the Commission stated in the Proposing Release that it would consider the requirements for exchange registration under Section 6 of the Exchange Act when determining whether it should require a Government Securities ATS to register as a national securities exchange. We note that Section 6(c)(1) of the Exchange Act provides that only registered broker-dealers may be members of a national securities exchange. However, over one-half of the entities that currently participate on BrokerTec are not registered broker-dealers and thus would not be eligible to be members of BrokerTec if it were required to register as an exchange. We believe that many other Government Securities ATSs have a similar profile with a strong presence of non-broker-dealer participation. Requiring BrokerTec or a similarly situated Government Securities ATS to register as an exchange would likely have the anomalous effect of significantly reducing its trading volume below the level that caused the Commission to require such registration in the first place. It also would be difficult for a Government Securities ATS that is required to operate as an exchange to compete fairly with other market centers for U.S. Treasury securities when it has had to exclude a substantial portion of its participants.

Finally, as a more general matter, before raising the specter of exchange-registration for a Government Securities ATS, the Commission should conduct a more thorough analysis of whether such a step would be feasible while also analyzing the potential benefits or disruptive consequences of imposing an exchange infrastructure on any segment of the Government Securities markets.

For all of these reasons, we recommend that the Commission refrain from expanding Rule 3a1-1(b)(3) to include U.S. Treasury securities.

⁴ We note that the volume test in Rule 3a1-1(b) is based in part on analyzing the volume of trading in a “class” of securities. We have been unable to find a definition of the term “class” in the Exchange Act and the rules promulgated thereunder. We believe that the lack of such a definition is not a concern for most exchange traded securities because the “class” of securities is identified on the issuer’s registration statement. However, the Department of Treasury is not required to file a registration statement with the Commission under current law.

III. Technology and Resiliency Requirements

A. General Comments on Proposed Regulation SCI Amendments

The Commission proposes to amend Regulation SCI to expand the definition of “SCI alternative trading system” to include a Government Securities ATS if five percent (5%) or more of the average weekly dollar volume traded in the United States in U.S. Treasury securities as provided by the SRO to which such transactions are reported are traded on the Government Securities ATS (hereafter, the “Five Percent Threshold” and such ATS, a “Significant Government Securities ATS”). A Significant Government Securities ATS would thus fall within the definition of “SCI entity” and, as a result, would be subject to the requirements of Regulation SCI. The Commission has stated that it believes expanding Regulation SCI in this manner 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.⁵

BrokerTec commends the Commission’s efforts to strengthen the infrastructure of the Government Securities markets. However, we think there is a better and more tailored way to move forward than subjecting Significant Government Securities ATSS to Regulation SCI. The Commission should instead begin its process of strengthening the resiliency of the government securities markets by amending Rule 301(b)(6) so that it applies to Government Securities ATSS, as suggested in the Proposal.⁶ In making this recommendation, we acknowledge, as the Commission has noted, that Rule 301(b)(6) is narrower than Regulation SCI in that it applies only to systems that support order entry, order routing, order execution, transaction reporting, and trade comparison. However, we believe that this would not represent a gap in the Commission’s oversight of Significant Government Securities ATSS because these systems represent their core technology systems.

This approach would also be aligned with the Commission’s own historical precedent of taking incremental steps in this area. For example, the Commission issued its Automation

⁵ The Commission adopted Regulation SCI in November 2014 to strengthen the technology infrastructure of the U.S. securities markets. Among other things, Regulation SCI requires SCI entities to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that their key automated systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets. Regulation SCI also requires SCI entities to take appropriate corrective action when systems issues occur; provide certain notifications and reports to the Commission regarding systems problems and systems changes; inform members and participants about systems issues; conduct business continuity and disaster recovery testing; conduct annual reviews of their automated systems; and make and keep certain books and records.

⁶ See the questions in item #128, 85 Fed. Reg. 87155.

Review Policy Statements in 1989 and 1991 and operated under these Policy Statements until it adopted Regulation SCI in 2014. As the Commission has previously noted, Regulation SCI was based, in part, on the Commission’s ARP Inspection Program, and the scope of the definition of “SCI entity” was originally intended to largely reflect the historical reach of this program. Further, when the Commission adopted Regulation SCI, it stated that it is was appropriate to take a measured approach towards imposing the mandatory requirements of Regulation SCI on additional entities given the potential costs of complying with this Regulation.⁷

Our proposed approach would be consistent with the incremental approach that the Commission has taken in the past. It would also allow Government Securities ATSS, which have not previously been subject to Commission oversight of their core technology, to cycle through the Commission’s Regulation ATS examination process and thus gain a better understanding of the Commission’s expectations in this area. Further, taking this approach would also provide Significant Government Securities ATSS with the opportunity to demonstrate to Commission staff that their existing systems and safeguards may currently satisfy the Commission’s resiliency objectives.

For example, BrokerTec’s trading technology has been migrated onto a new platform built from the code base that supports CME Globex, which is the same technology that CME uses to operate its four CFTC designated contract markets. This technology, as well as the control frameworks that govern its development, capacity, integrity, resiliency, availability and security are subject to the CFTC’s systems safeguard requirements, and the staff of the CFTC regularly reviews CME to determine whether it complies with these requirements.⁸ This oversight and review includes (but is not limited to) CME’s capacity planning and stress testing program, cyber defense and threat intelligence, business continuity and disaster recovery practices, software development lifecycle, and systems monitoring practices.

Similarly, many Government Securities ATSS may already align with industry standards that achieve many of the same goals of Regulations SCI, although in slightly different manner. For example, prevailing industry standards require organizations to develop policies and procedures to inventory and catalog physical devices and systems, and prioritize resources based on their classification, criticality, and business value.⁹ These industry standards provide organizations with flexibility on how to build and design asset inventories, within the context of their overall business, infrastructures, and system architectures. Regulation SCI, however, imposes a specific manner in which SCI Entities

⁷ [See](#) 79 Fed. Reg. 72252, at 72259 (December 5, 2014).

⁸ [See](#) 17 C.F.R. §38 .1051 [et. seq.](#) (2020).

⁹ [See](#), e.g., National Institute of Standards and Technology, Cybersecurity Framework, ID.AM-1, 4 and 5.

must organize their asset inventories, and requires them to distinguish and track “SCI systems” (including further designation for those SCI systems deemed to be “Critical”), as well as “Indirect SCI systems.”¹⁰ Redesigning and implementing new asset inventories to comply with Regulation SCI would require significant investment and would impose material upfront compliance costs, without any evidence that an organization’s existing practices are inadequate. Fundamentally, we agree that regulatory oversight over the technology and resiliency of Government Securities ATs could be beneficial. But this oversight must be fit for purpose—requirements should encourage meaningful investment that will make a substantive impact on technological resilience rather than divert resources to tasks that may not make a meaningful impact in this area.

A further example relates to business continuity and disaster recovery requirements. If Rule 301(b)(6)(B)(ii)(E) applied in the first instance, Government Securities ATs would be required to “[e]stablish adequate contingency and disaster recovery plans.” This Rule provides Government Securities ATs with flexibility on how to design and implement their relevant plans. It also provides the Commission with a regulatory framework by which to conduct examinations and inspections to determine what, if any, further regulations would be beneficial for this particular market and its participants. Regulation SCI has more prescriptive requirements related to geographically disperse disaster recovery, recovery time objectives, and testing, including industry wide coordination requirements which may not be fit for purpose in the U.S. Treasury securities markets. Taking an incremental approach to regulating this space, consistent with the Commission’s past practices, will help ensure that requirements are tailored and effective. Maintaining and ensuring the capacity, integrity, resiliency, availability, and security of the U.S. Treasury securities market is an area where the interests of regulators and regulated entities are uniquely aligned. While we support the Commission’s efforts in this area, we also wish to ensure that any related regulations are tailored and well-designed, given the complicated, fast moving, and often entity specific nature of this area. We believe that a one size fits all approach can create unintended consequences and introduce inefficiencies.

For all these reasons, we believe the Commission should move forward with applying the current Rule 301(b)(6) standards on Significant Government Securities ATs rather than Regulation SCI. This approach would help the Commission to avoid imposing undue costs on Significant Government Securities ATs which it may later determine to have been unnecessary.

¹⁰ See 17 C.F.R. § 242.1000 (2020).

B. Appropriate Threshold: None

As noted above, the Proposal would require a Government Securities ATS to comply with certain technology and resiliency requirements under Regulation SCI¹¹ if it exceeds the Five Percent Threshold, which is generally the same threshold that applies to an ATS that trades NMS stocks.¹² For the reasons explained above, we recommend that the Commission impose technology and resiliency requirements by amending Rule 301(b) to cover a Government Securities ATS in lieu of expanding Regulation SCI. As to the appropriate threshold that would trigger application of the Rule 301(b)(6) standards, we believe this part of the rule should apply to all Government Securities ATSs, regardless of trading volume.

When crafting the Regulation SCI threshold for NMS ATSs, the Commission considered a number of factors, including the dispersal of trading volume among an increasing number of national securities exchanges and other trading venues, the increasingly interconnected nature of the markets, and the increasing reliance on a variety of automated systems. While some of these factors are relevant to the U.S. Treasury market, we believe that the fundamental importance of the U.S. Treasury market clearly justifies subjecting all Government Securities ATSs to a set of uniform, principles-based technology and resiliency requirements.

The U.S. Treasury market is the deepest and most liquid government securities market in the world. U.S. Treasury securities play a unique role in the global economy, serving as the primary means of financing the U.S. federal government, a critical store of value and hedging vehicle for global investors and savers, the key risk-free benchmark for other financial instruments, and an important conduit for the Federal Reserve's implementation of monetary policy.¹³ In addition, U.S. Treasury securities are generally regarded as the world's premier safe or "risk-free" asset. As a result, it is important to take appropriate steps to enhance the resilience of this market.

As the Commission has previously noted, given the speed and interconnected nature of the U.S. securities markets, a seemingly minor systems problem at a single entity can

¹¹ We have suggested herein that the Commission require a Government Securities ATS to comply with Rule 301(b)(6) rather than Regulation SCI. For ease of reference, we will refer generally to "technology and resiliency requirements" in the following discussion.

¹² Under current law, an ATS that trades NMS stocks is subject to regulation SCI if, during at least four of the preceding six calendar months, it had five percent or more in any single NMS stock, and 0.25 percent or more in all NMS stocks, of the average daily dollar volume reported by applicable effective transaction reporting plans.

¹³ See Joint Staff Report: The U.S. Treasury Market on October 15, 2014, available at <https://www.sec.gov/files/treasury-marketvolatility-10-14-2014-joint-report.pdf> ("October 15 Staff Report").

spread rapidly and quickly create losses and liability for market participants, potentially creating widespread damage and harm to market participants, including investors.¹⁴ Further, requiring only higher volume Government Securities ATSS to comply with a set of technology and resiliency requirements may have adverse consequences on the U.S. Treasury markets. A higher volume Government Securities ATS will incur costs in order to comply with such requirements, and such ATS may be required to pass on some or all of these costs to its participants. If this were the case, then market participants may choose to move their trading activity to a Government Securities ATS that is not subject to any such requirements and thus has a lower cost structure. Thus, the unequal application of the Commission's technology and resiliency requirements could actually increase the amount of Government Securities trading activity on trading platforms with less robust technology controls. Further, because compliance with these technology and resiliency requirements would be dependent upon hitting a fixed volume target, a trading platform could intentionally limit its trading volume in order to ensure that it does not become subject to this requirement.¹⁵

Based on the above, we believe that all Government Securities ATSS should be required to comply with a uniform, principles-based set of technology and resiliency requirements, specifically as we propose above, those set out in Rule 301(b)(6). This would strengthen the operational resiliency of the Government Securities markets in an even-handed manner and would be consistent with the Commission's obligation to assure fair competition among broker-dealers that sponsor Government Securities ATSS.¹⁶

C. Technical Compliance Date Issue

In the event the Commission does not adopt our suggested approach, BrokerTec would likely be a "SCI alternative trading system" under the revised definition of this term as proposed by the Commission. Under the current definition of "SCI Alternative Trading System", an ATS that falls under this definition is not required to comply with the requirements of Regulation SCI until six months after it satisfies the relevant volume requirements for the first time. However, it appears that the Commission has eliminated this deferred compliance period from the definition of "SCI alternative trading system" in the Proposing Release.¹⁷ It is not clear whether such elimination was inadvertent or intentional. As a result, we would appreciate clarification from the Commission on this

¹⁴ See 79 Fed. Reg. 72252, at 72253 (December 5, 2014).

¹⁵ Our review of certain public ATS-N filings indicates that some ATSS will suspend trading in individual NMS stocks if these platforms are approaching the Regulation SCI volume threshold.

¹⁶ See Section 11A(a)(1)(C)(ii) of the Exchange Act.

¹⁷ See Proposing Release at 87211 (SEC apparently eliminates the current version of clause (3) in this defined term).



matter. We do not see a reason for the Commission to eliminate this deferred compliance period and suggest that it be retained.

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. If you have any questions regarding our comments, please feel free to contact me at [REDACTED] or via email at [REDACTED].

Sincerely,

A handwritten signature in black ink that reads "Kathleen M. Cronin".

Kathleen M. Cronin
Senior Managing Director, General Counsel and Corporate Secretary
CME Group Inc.