

March 1, 2021

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE, Washington DC 20549

Sent by Email to rule-comments@sec.gov

Re: Concept Release on Electronic Corporate Bond and Municipal Securities Market (File Number S7-12-20)

Dear Ms. Countryman:

MarketAxess Holdings Inc. (“MarketAxess”) welcomes the opportunity to respond to the Securities and Exchange Commission’s (the “Commission”) request for public comment regarding fixed income electronic trading platforms and the potential regulatory gaps that may exist among these platforms with respect to access to markets, system integrity, surveillance, and transparency.

MarketAxess operates the leading, institutional electronic trading platform for corporate bonds¹. Through its registered broker-dealer, MarketAxess Corporation, and its global affiliates, more than 1,800 firms traded a record \$2.6 trillion of U.S. investment-grade bonds, U.S. high yield bonds, emerging market debt, Eurobonds and other fixed income securities on the MarketAxess platform in 2020. MarketAxess’ Open Trading™ marketplace is regarded as the premier all-to-all trading solution in the global credit markets, creating a unique liquidity pool for the broad range of credit market participants.

We have responded to certain of the Commission’s detailed questions below, but we would first make the following high-level comments:

MarketAxess favors a common regulatory framework. MarketAxess is supportive of the Commission’s review of the regulatory oversight of fixed income electronic trading platforms. We believe that there should be a common regulatory framework for all multilateral fixed income electronic trading platforms that requires minimum standards of conduct and oversight in areas such as trade reporting, resiliency, cyber-security, operational reporting, financial standards, examination, surveillance, and confidentiality. Although most (but not all) fixed income electronic trading platforms are registered as broker-dealers, we do not believe that the current broker-dealer framework, in isolation, is sufficiently tailored to the fixed income electronic trading markets to best promote the fair and effective growth of these markets. We believe that a common base-level of standards should apply

¹ All of the trade volume that is publicly reported as executed on the MarketAxess system is fully electronic; however, less than 1% of the more than 5.0 million trades completed on the MarketAxess platform in 2020 were executed on a registered ATS. In 2020, corporate bond trades (including both investment grade and high-yield bonds) on all ATSS represented only 6.4% of the trade volume and 18.7% of the trade count reported to TRACE, while trades on the MarketAxess system alone represented 19.5% of trade volume and 23.0% of trade count.

to any multilateral electronic trading platform for registered securities, including corporate or municipal bonds, whether retail or institutional, order book or RFQ, disclosed or anonymous and regardless of such platform's fee structure or average daily volume. As pointed out by the Fixed Income Market Structure Advisory Committee ("FIMSAC") established by the Commission, this is not currently the case and MarketAxess believes the Commission's continued reliance on Regulation ATS for new rule making will continue to drive a wedge between the regulatory frameworks governing the various fixed income platforms without a new covering regulation or a comprehensive definition of a "fixed income electronic trading platform".

Notwithstanding our belief that there are areas for improvement in the existing regulatory framework, the Commission must keep in mind that the electronic trading of fixed income securities is growing rapidly. Market participants are benefiting from broad-based competition among venues, investments in new and innovative trading protocols, greater trading efficiency, and lower transaction costs. We are also seeing substantial increases in market participation as new entrants benefit from greater market transparency, and fair and impartial access to fixed income order flow. We believe that the positive changes brought on by electronic trading have already created a more liquid, diverse and fair fixed income market. Any reconsideration of the regulatory framework should not interrupt this positive momentum.

The current ATS framework is not the answer. Although MarketAxess believes that there should be a common regulatory framework for fixed income platforms, we do not believe that fixed income platforms should be shoe-horned into a Regulation ATS paradigm that was primarily developed for a listed equity market. Importantly, the fixed income electronic trading market is not one size fits all and it is continuing to evolve. There are platforms that are primarily order-driven (such as retail-focused order books) and others that are driven by price requests (such as institutional request for quote ("RFQ") platforms). As explained below, the current regulatory framework for ATSs, which primarily reflects the trading practices of the equity markets, is ill-suited for fixed income platforms driven by price requests.

Sophisticated institutional investors in the credit markets have long relied on RFQ as their electronic trading functionality of choice because they have found that liquidity on demand results in the best pricing for illiquid securities. However, not only do RFQ platforms not meet the current definition of an ATS², the inclusion of RFQ functionality within the definition of an ATS would also have knock-on effects on other rules that rely on Regulation ATS. For example, Rule 15c3-5 of the Securities Exchange Act requires a broker-dealer providing market access on an exchange *or* ATS to have a variety of financial and regulatory risk management controls that would be inapplicable to a RFQ platform in which the operator of the platform is simply providing efficient means for market participants to connect and trade with disclosed counterparties. Unlike equities exchanges, fixed income electronic trading venues are usually not the buyer to every seller, and the seller to every buyer. In our view, this supports a lighter regulatory approach versus equities exchanges that control the clearing for transactions

² RFQ protocols use non-discretionary matching technology as the prevalent form of trading and allow for only the requestor to interact with bids or offers sent in response to a request. As such, it has long been understood that RFQ functionality (one-to-many) does not constitute bringing together orders for securities of multiple buyers and sellers (many-to-many) as required under §240.3b-16(a)(1). In addition, the RFQ requestor may have the ability to transact against any quote provided in response to his or her request for quote. This trading discretion puts the protocol outside the requirement that the platform use "established, non-discretionary methods under which such orders interact with each other" as required under §240.3b-16(a)(2).

conducted on their platforms. As such, we could envision a revised form of Regulation ATS applying equally and specifically to all fixed income electronic platforms with regard to specified minimum standards, operational transparency and conduct. MarketAxess believes that broker-dealer regulation, in conjunction with this modified Regulation ATS for fixed income trading platforms, would provide the best framework for the continued growth of fair and effective fixed income electronic trading markets.

Fixed income markets trade very differently than equity markets. We believe that it is imperative that the Commission’s review takes into account that a logical market structure has already evolved for fixed income electronic trading that is radically different from the current equity market structure. Corporate credit and municipal bond markets trade bilaterally, with far less frequency and with less reliance on complex orders and speed of execution than in the equity markets. These distinctions arise from the fact that there are hundreds of thousands of CUSIPs for corporate and municipal bonds, but only a few thousand common stocks in the U.S. As a result, there are no market makers for a meaningful subset of corporate and municipal bonds. Bonds are therefore far less liquid, and turn over much less, than common stocks.

This relative lack of liquidity and turnover for fixed income securities has driven the development of fixed income electronic trading protocols that are different than the order-driven protocols, like a central limit-order book (“CLOB”), that are fundamental to the listed equities market. CLOBs have historically failed in the corporate credit and municipal bond markets because it has not been possible to maintain a tight enough bid-ask spread for a highly fragmented market in which most bonds do not trade on a daily basis. MarketAxess estimates that only approximately 17% of the over 43,000 unique U.S. investment grade bonds traded on any given day in 2020.

Instead of CLOBs, client to dealer RFQs still dominate the electronic trading markets for corporate and municipal bonds. Variations of the RFQ protocol, such as MarketAxess’ Open Trading™ functionality, have developed that allow clients to simultaneously request liquidity on an anonymous basis from over 1,000 platform participants. Connecting to more counterparties improves trading outcomes and lowers transaction costs for liquidity providers and takers. Client preference is generally to have the flexibility to use both anonymous and disclosed forms of RFQ because dealers may be more aggressive with pricing when they know the identity of the client requesting a price.

MarketAxess believes any revisions to the regulatory framework for fixed income electronic trading should not stifle the investment and innovation that has led to the variety of existing trading protocols focused on pooling liquidity for market participants. This innovation has led to all-to-all trading solutions, which we believe are aligned with many of the Commission’s stated regulatory goals. All-to-all trading has helped level the playing field by providing all participants with access to the same order flow, and it has also alleviated some of the market stress caused by the pandemic in the Spring of 2020. MarketAxess believes that changes in trading protocols, whether the continued evolution of RFQ or all-to-all trading, or the development of a CLOB or matching sessions for the most liquid portions of the credit and municipal markets, have led to the logical market structure that exists today for fixed income electronic trading. We believe it would be a mistake to interrupt this evolution through the increased imposition of an equity-based regulatory framework.

Any new framework must apply equally to multilateral platforms currently escaping regulatory oversight. While MarketAxess is supportive of a regulatory framework that would impose appropriate minimum standards on electronic trading platforms that are more tailored to the fixed income electronic trading market than the general broker-dealer framework, we would not be in favor of any

change if it allowed certain multilateral platforms to continue to avoid any regulation whatsoever. As noted by FIMSAC, there are fixed income trading platforms with significant volume in municipal and corporate bond trading that do not fall under any regulatory oversight in the U.S. These platforms provide similar services to its participants as do electronic RFQ platforms systems (among which include organizing liquidity, trading functionality, such as RFQ and list trading, and straight-through processing services). MarketAxess believes that it would be a disservice to market participants, and patently unfair to the currently regulated platforms, to impose additional regulatory and compliance burdens on existing platforms while allowing others to avoid even minimum standards of conduct and oversight. A lack of regulatory oversight can only increase the likelihood of harm to investors.

The FIMSAC should be Reconstituted. The FIMSAC was formed in November 2017 to provide the Commission with diverse perspectives on the structure and operations of the U.S. fixed income markets, as well as advice and recommendations on matters related to fixed income market structure. By all accounts, FIMSAC has been successful--passing 16 recommendations in three years. MarketAxess believes that the Commission should reconstitute the FIMSAC in order to receive the advice and recommendations of market participants and other interested parties on developments in the fixed income markets, including any potential changes to the regulatory framework for fixed income electronic trading platforms.

Specific questions³

146. Given the technological developments in the fixed income electronic trading markets and electronic trading of fixed income securities, do commenters believe that the current regulatory framework for fixed income electronic trading platforms best promotes the growth of fair and efficient markets for investors? If not, what regulatory approach(es) would best address the needs of the market and market participants? Does the current regulatory structure for national securities exchanges, broker-dealers, and ATSs cover the full range of fixed income electronic trading platforms operating today? If not, please explain any gaps in the regulatory structure and to which platforms it does not apply.

MarketAxess agrees with FIMSAC's observation that there is no consistent standard for publicly reporting electronic trading volumes across the many trading platforms currently trading corporate and municipal bonds. Multiple inconsistent practices characterize the discretionary disclosure of volumes by the individual venues. For example, MarketAxess research estimates that approximately 80% of ATS block trades and 65% of ATS round lots trades (\$1-5mm) were double-counted in TRACE in November 2020, which we believe resulted in TRACE volume increasing by over \$1.0 billion per day. MarketAxess believes that this double-counting is emanating from single-dealer order flow that had been single-counted in TRACE until dealers began processing such trades on an ATS. Disclosed single dealer trades executed through any other mechanism are single-counted in TRACE---it is only the relatively recent advent of including single dealer work flows in an ATS that has given rise to the frequent double counting (once by the ATS and the other by the dealer executing the trade). Given that Regulation ATS relies on a platform's average daily volume for purposes of determining fair access and heightened

³ This letter does not attempt to respond to each of the questions that the Commission has raised in its Concept Release.

capacity, integrity and security standards, we believe that a common industry standard for electronic trade volume reporting is critical.

MarketAxess also agrees with the recent FIMSAC recommendation to modernize Rule 17a-7 in a manner that will allow a registered investment adviser to cross a trade using a fixed income electronic trading platform that has functionality specifically designed to achieve fair pricing of cross trades. Electronic trading platforms did not exist when Rule 17a-7 was adopted in 1966 and can be an important tool for obtaining best execution if the regulatory framework evolves to accommodate technological developments.

148. Are there particular elements of the definition of exchange under Exchange Act Rule 3b-16(a) that should or should not be changed with respect to fixed income electronic trading platforms, or more specifically, the corporate debt markets or municipal debt markets? What are commenters' views on the potential consequences of expanding or limiting the definition of exchange under Rule 3b-16(a) with regard to these trading platforms or markets? For instance, what are commenters' views on how changing Rule 3b-16(a) could benefit or harm investors and the market participants that use fixed income electronic trading platforms? Should the Commission, rather than amending Rule 3b-16(a), issue guidance on the elements of Rule 3b-16(a) regarding considerations relevant to the definition of exchange in the context of a fixed income platform? If so, what elements of Rule 3b-16(a) should the Commission issue guidance on and why? For example, should the Commission issue guidance on what is considered an "order" under Rule 3b-16(a)? Given the technological changes in the securities industry since Regulation ATS was adopted in 1998, should the Commission revise, or provide additional, examples in Regulation ATS of systems that fall within or outside the definition of exchange under Rule 3b-16?

MarketAxess believes that specific guidance regarding the definition of exchange in the context of fixed income platforms could benefit market participants. In particular, MarketAxess believes that further guidance that clarifies that RFQ platforms do not perform the functions commonly performed by a stock exchange within the meaning of Rule 240.3b-16 would be useful to market participants. As described below, the majority of RFQ trades are completed on a name-disclosed basis with no central clearing party. The Commission should also provide further or updated examples of systems that fall within or outside the definition of exchange, particularly in the context of the proliferation of session-based trading protocols.

149. As noted above, fixed income electronic trading platforms offer a variety of different trading protocols and business models, and the FIMSAC expressed concern about varying regulatory treatment among these trading platforms. What do commenters believe are the key common characteristics of a fixed income electronic trading platform that should merit their common regulation under the securities laws?

MarketAxess believes that some of the key common characteristics of a fixed income electronic trading platform meriting common regulation include the conduct of some or all of the following activities by electronic means:

- Providing participants with pre-determined trading protocols;
- Aggregating quotes or orders from multiple parties for the purpose of price formation, either episodically or on a continuous basis;
- Bringing together multiple buying and selling interests;
- Informing participants that a trade has been executed;
- Sending out post-trade messages with the material terms of a trade; and
- Holding oneself out as a trading platform⁴.

By conducting these activities, the platform can influence whether a trade is executed, as well as the price and other terms of such trade. The platform and its employees will also have access to the confidential trading information and strategies of its participants. These activities, typical of a broker-dealer, warrant regulatory oversight.

MarketAxess accepts that there is a line between systems that act solely as an order management system (OMS) or messaging system and those that act as a fixed income electronic trading platform. MarketAxess believes that in order for an OMS or messaging system to avoid the regulation applicable to fixed income electronic trading platforms, the OMS or messaging system cannot provide direct connectivity between end-users for purposes of liquidity formation, provision of trading functionality, trade execution or the settlement or clearance of transactions.

150. As noted above, securities intermediaries generally are regulated either as exchanges or as brokers or dealers. What do commenters believe are the key regulatory standards that should apply to fixed income electronic trading platforms? Are there aspects of the current regulatory structure, other than regulatory treatment, that should not apply to these trading platforms? Are there other standards not addressed in the current regulation that should be considered? How could the current regulatory structure for these trading platforms be improved?

The key standards which we believe should apply to all fixed income electronic trading platforms include:

- Trade reporting,
- System resiliency,
- Cyber-security,
- Operational reporting and transparency,
- Minimum financial standards and reporting,
- Examination,
- Market surveillance requirements, and
- Confidentiality.

⁴ For example, a platform that is currently not subject to regulation advertises on its website that its “fixed income trading platform and complete execution management solution provide[s] liquidity, trading functionality and straight-through processing for all fixed income securities”.

Platforms that operate on a disclosed basis (e.g. disclosed RFQ) pose less risk to the market as the participants know the identity of their counterparties at all times during the trading process and settlement occurs directly between the two participants. We do not think the market access controls that are imposed on ATSS by Exchange Act Rule 15c3-5 should apply to trading functionality that operates on such a disclosed basis. Furthermore, trading platforms operating on a disclosed basis are not well-situated to implement the risk controls required by Rule 15c3-5, particularly the credit limit controls. On the contrary, the imposition of market access controls across the full spectrum of fixed income electronic platforms would likely have an adverse impact on dealer interactions with their clients.

151. What do commenters believe are the key inconsistencies in the regulation of fixed income electronic trading platforms? Do these inconsistencies create risks to the integrity of the market for fixed income securities, and if so, how? Do these inconsistencies create burdens on competition among market participants, and if so, how?

As discussed above, one of the most obvious inconsistencies is the absence of regulatory oversight for fixed income electronic trading platforms based on their fee model (e.g., charging a higher monthly platform fee rather than a per transaction commission). Such platforms provide protocols⁵ with nearly identical functionality as several platforms regulated as broker-dealers. We understand that such platforms may have escaped regulation in the past based on their fee model (e.g., charging a high monthly platform fee rather than a per transaction commission). Market participants should be entitled to know that all electronic trading platforms, regardless of their fee model, are subject to the same basic standards of conduct and oversight (in the same way that doctors should have a medical license regardless of whether they charge an annual or per visit fee). In the event that the Commission concludes that such protocols do not constitute broker-dealer activities or should not be otherwise regulated through a modified ATS regime, we request that the Commission provide clear guidance on this point.

In addition, Regulation ATS is reliant on the calculation of a platform's percentage of the average daily volume of corporate debt or municipal securities traded in the United States to determine the appropriate fair access and capacity, integrity and security standards applicable to each ATS. As noted in FIMSAC's recent recommendation regarding defining "Electronic Trading" for regulatory purposes, however, there are multiple inconsistencies in the way electronic trading platforms currently report transactions and calculate market share. MarketAxess believes that the promulgation of industry standards that address the current inconsistencies in electronic trade volume reporting is necessary for maintaining the integrity of those portions of Regulation ATS (17 CFR § 242.301 (5) and (6)) that rely on market share.

⁵ Such protocols include institutional RFQ, as well as trading protocols that electronically aggregate executable orders from retail market makers in the same manner as ATS platforms that primarily serve retail market participants.

153. The Commission, FINRA, and the MSRB all have important roles in the regulation of corporate and municipal debt markets. Do commenters believe that the combined regulation of these markets is effective? If not, how could collective regulation of these markets be improved?

MarketAxess appreciates the roles that each of the Commission, FINRA and MSRB play in the regulation of the corporate and municipal debt markets and we generally believe the combined regulation is effective. We believe, however, there is a risk of redundant or conflicting regulation given the tiered regulatory framework currently in place. MarketAxess believes that there should be continued coordination between the Commission, FINRA and MSRB to ensure that the regulation that is applicable to platforms operating in the corporate and municipal bond markets, respectively, have the same standards, wherever possible, while respecting the distinctions in each market. Continued coordination of exam schedules and themes between the Commission, FINRA and MSRB will also increase the effectiveness of the overall regulatory framework.

We would also note that there is a disconnect between the Commission’s regulation of ATSs and FINRA’s use and reliance on the ATS flag required for TRACE reporting. As the Commission has not historically precluded ATSs from including non-ATS functionality “within the ATS,” MarketAxess believes that certain ATSs include electronic RFQ volumes and voice-brokered trades in their ATS volumes, even though such protocols would not qualify as an ATS in their own right. FINRA’S TRACE reporting rules require each ATS to report all transactions executed “within the ATS” to TRACE, thereby making reliance on the ATS flag an unreliable indicator of ATS or electronic volumes.⁶

154. Should the Commission consider a definition of exchange that is unique for fixed income electronic trading platforms? If so, what should that definition be and what aspects of the fixed income electronic trading markets should the definition address or not address? What are commenters’ views on how such a definition would be advantageous or disadvantageous to market participants that use fixed income electronic trading platforms and investors? How would a definition of exchange tailored for fixed income electronic trading platforms promote fair and orderly markets? How could such a definition be crafted in a way that would account for potential changes in technology that could be applied to fixed income markets and trading in the future? Would a separate definition of exchange for fixed income electronic trading platforms conflict, or create investor confusion, with regard to a definition of exchange for other asset classes, such as government securities, NMS stock, or OTC equity securities?

⁶ Additionally, the use of ATS flags and the manner of TRACE reporting for ATSs and FINRA member firms differs based on the specific operations and settlement method of each ATS. For example, if an ATS “gives up” a trade to another broker-dealer for clearing and settlement, the clearing broker will additionally report the trade(s) to TRACE. This process can result in a single transaction being disseminated three or four times on TRACE depending on how many FINRA member firms are party to the trade.

As stated above, MarketAxess believes that all fixed income electronic trading platforms should have a minimum set of standards that are tailored to the fixed income electronic trading market. As such, we believe that a definition of “exchange” that is reliant on the “functions commonly performed by a stock exchange” will always be prone to creating uncertainty as it is applied to the fixed income market due to the structural differences between the equity and fixed income markets. We do not believe that a separate definition of “exchange” for fixed income electronic trading platforms will create any more investor confusion than already exists.

155. Some electronic platform providers offer their customers a suite of different types of electronic trading protocols (e.g., auctions, request for quotes, central limit order books) that are designed to find and match counterparties. These electronic platform providers might also offer voice protocols or a hybrid of voice and electronic protocols and pricing data and facilitate trade reporting and clearing services. Do electronic platform providers such as these provide fixed income market participants with a marketplace for buying and selling fixed income products? Should all the protocols and services offered by electronic platform providers be considered together for purposes of the definition of exchange under federal securities laws?

We believe that the provision of electronic trading services, regardless of trading protocol, should be regulated distinctly from the function of providing data, facilitating trade reporting and clearing services. Further, we believe that voice protocols should be explicitly excluded from the definition of an exchange.

159. Today, ATSs can only transact in securities; however, an ATS may, in addition to its Rule 3b-16 activity, conduct secondary transactions in securities in manners that may not meet a criteria of Exchange Act Rule 3b-16(a). Should the Commission amend Regulation ATS to require Fixed Income ATSs to only operate in a manner that meets the criteria of Rule 3b-16(a)? What would be the advantages and disadvantages to investors and the Commission should the Commission require this?

MarketAxess is a proponent of trading innovation in any form, regardless of trading protocol. However, as noted above, we are concerned by the consequences of allowing an ATS to execute transactions that do not meet the criteria of Rule 3b-16(a). New trading protocols should be properly classified and regulated so as to avoid the double-counting risk in TRACE that occurs when non-ATS trading functionality is included within an ATS. MarketAxess believes the disconnect between the Commission’s regulation of ATSs and the FINRA requirement to flag ATS trades needs to be addressed.

160. The Fair Access Rule applies when an ATS, during at least four of the preceding six months, had five percent or more of the average daily volume of municipal securities traded in the United States or had five percent or more of the average daily volume of corporate debt securities traded in the United States. Do commenters believe that the current fair access threshold under Rule 301(b)(5) of Regulation ATS for Fixed Income ATSs continues to be appropriate to capture ATSs with a significant percentage of the trading volume in corporate debt and municipal debt? If not, do commenters believe that access to Fixed Income ATSs is an important goal that the Commission should consider in regulating such platforms? If so, are there circumstances in which a Fixed Income ATS should be able

to limit access to its system, or alternatively, should be required to grant access to its system? Are the current requirements of the Fair Access Rule appropriate for Fixed Income ATSs? Should the definition of exchange and Regulation ATS be amended so that the Fair Access Rule applies to transactions in fixed income securities occurring through various platforms offered by a broker-dealer and its affiliates in which the broker-dealer also operates a Fixed Income ATS? Should the Fair Access Rule apply to platforms that trade fixed income securities but are not Fixed Income ATSs?

We do not believe fair access rules are necessary for, or even applicable to, fixed income platforms. Given the lack of a central clearing party for corporate and municipal bond trades, each participant has the discretion over which other participants (on the trading platform or otherwise) they wish to extend credit to and trade. Electronic trading platforms must maintain a credit matrix as to which parties will trade with each other. In this context, fair access to the platform is deprived of the meaning given to it in the equity ATS context as the platform does not have the ability to ensure that any participant has access to the same liquidity as other participants.

With regard to ATSs that operate in a manner that is compliant with Rule 3b-16(a), MarketAxess believes that fair access has not been a historical issue of concern in the fixed income market and should not be area of focus of the Commission at the current time. In the event that the Commission maintains a fair access rule, we believe that it must allow platforms to continue to set or deny credit limits based on objective criteria and to deny access to competing platforms. MarketAxess believes that the capacity, integrity and security standards are as equally important as fair access standards and that therefore the thresholds for Rule 301(b)(5) and (6), which is discussed in our response to Question 161 below, should be aligned.

161. The current Capacity, Integrity, and Security Rule under Rule 301(b)(6) of Regulation ATS applies when an ATS, during at least four of the preceding six months, had 20 percent or more of the average daily volume of municipal securities traded in the United States or had 20 percent or more of the average daily volume of corporate debt securities traded in the United States. Do commenters believe that the current Capacity, Integrity, and Security Rule continues to be appropriate to capture ATSs with a significant percentage of the trading volume in corporate debt and municipal debt? Should the Commission amend Rule 301(b)(6) to lower the current 20 percent threshold? If so, should the Commission adopt a threshold of, for example, 5 percent, 7.5 percent, 10 percent or 15 percent? Please support your views. Do commenters believe that the Capacity, Integrity, and Security Rule requirements are appropriate for Fixed Income ATSs? Should the requirements apply to all Fixed Income ATSs? Should the Capacity, Integrity, and Security Rule requirements apply to non-ATS platforms for corporate bonds and municipal securities operated by a broker-dealer that also operates a Fixed Income ATS? Should the Capacity, Integrity, and Security Rule apply to platforms that trade corporate bonds and municipal securities but are not Fixed Income ATSs?

MarketAxess believes that the current 20% threshold under Rule 301(b)(6) of Regulation ATS is not an appropriate threshold to capture ATS with a significant percentage of the trading volume in corporate or municipal debt. Given that aggregate ATS volumes were less than 7% of investment-grade and high-yield TRACE volumes for 2020, it is unlikely that any single ATS will approach 20% of either the

overall corporate or municipal debt markets in the conceivable future unless the definition of ATS is expanded. MarketAxess believes, however, that the requirements of Rule 301(b)(6) should apply, at minimum, to all fixed income electronic trading platforms as a condition of operation. Other than Rule 301(b)(6)(ii)(f) and (g), we would be surprised if nearly all existing platforms were not already meeting or trying to meet the requirements of Rule 301(b)(6). Moreover, we believe such capacity, security and integrity standards should be applicable to all trading functionalities (particularly as all electronic trading becomes more automated).

162. ATSs that trade equity securities – both NMS stocks and non-NMS stocks – are no longer subject to the Capacity, Integrity, and Security Rule under Rule 301(b)(6) of Regulation ATS. Rather they are now subject to the requirements of Regulation SCI. Should the Fixed Income ATSs be subject to Regulation SCI rather than the Capacity, Integrity, and Security Rule under Regulation ATS? If yes, should the same threshold tests for applying Regulation SCI to an ATS be applied to Fixed Income ATSs when determining if a given Fixed Income ATS is an “SCI ATS?” If not, what trading volume or other threshold should apply to Fixed Income ATS?

MarketAxess does not believe that fixed income ATSs should be subject to Regulation SCI. The SEC ultimately decided not to apply Regulation SCI to ATSs that trade only fixed-income securities when it was adopted in 2015 out of a concern that the significant requirements could discourage the greater adoption of automation in the fixed-income markets. We believe this concern still exists and that the requirements of the Capacity, Integrity and Security Rule under Rule 301(b)(6) make more sense than Regulation SCI in the context of corporate and municipal bonds markets that do not trade with the frequency and speed of execution that is prevalent in other markets.

163. Do commenters believe that it is clear when a fixed income electronic trading platform meets the definition of a broker-dealer under the Exchange Act? Should the Commission provide guidance? Are there particular fact patterns that commenters believe would be helpful for the guidance to address?

MarketAxess believes that the definition of a broker-dealer under the Exchange Act in the context of fixed income electronic trading platforms needs further clarification. Please see our response to Question 151.

165. Do commenters believe that there are fixed income electronic trading platforms that are not registered as either a broker-dealer or a national securities exchange and that do not operate as an ATS but perform similar market functions as a broker-dealer, national securities exchange, or an ATS? If so, please explain what these systems are and how they may be different or the same as a broker-dealer, national securities exchange, or ATS that operates as a fixed income electronic trading platform. Do commenters believe that such platforms should or should not be required to register with the Commission? Do commenters believe that such platforms should or should not be required to operate pursuant to an exemption from the definition of an exchange, such as Regulation ATS? Should such platforms be required to register as something other than a broker-dealer or national securities exchange? Should such systems be subject to the same operational transparency requirements for broker-dealers, national securities exchanges, or ATSs? What aspects of these

systems would be important to market participants who may use these platforms? Do commenters believe that there is sufficient oversight of these platforms by the Commission? If not, how should the Commission enhance oversight of these platforms?

Please see our response to Question 151.

166. As commenters think about whether and how to change the regulatory framework for fixed income electronic trading platforms, are there any lessons commenters can draw from the market stress during Spring 2020, including, for example, lessons learned regarding business continuity or capacity planning?

MarketAxess believes that the fixed income electronic trading market proved to be resilient with no capacity issues throughout 2020. In particular, the leading electronic trading platforms were key in maintaining connectivity to critical liquidity providers, banks, dealers and alternative market makers as the market transitioned to a work-from-home environment. MarketAxess itself provided home-environment connectivity to over 10,000 individual traders in one week in March 2020. MarketAxess points to the full comments of Richard McVey, MarketAxess' CEO, at the October 5, 2020 meeting of FIMSAC⁷.

If you have any questions concerning this letter or our responses to the questions, please feel free to contact us. We would welcome the opportunity to discuss these issues further with the Commission.

Yours sincerely,



Scott Pintoff
General Counsel, MarketAxess

cc: The Honorable Allison Herren Lee, Acting Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner

⁷ See <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-100520-transcript.pdf> (pages 49-57).