



March 8, 2021

Vanessa A. Countryman
Office of the Corporate Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
Rule-comments@sec.gov

Re: File Number S7-12-20 - 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 (“**ATS-G Proposal**”)¹

Dear Ms. Countryman:

ICE Bonds Securities Corporation (“**ICE Bonds**”) appreciates the opportunity to respond to the ATS-G Proposal of the Securities and Exchange Commission (“**SEC**” or the “**Commission**”) to extend the requirements of Regulation ATS to alternative trading systems (“**ATS**”) that only trade government securities² or repurchase and reverse repurchase agreements on government securities (“**Government Securities ATS**”).³

By way of background, ICE Bonds is a broker-dealer registered with the SEC under the Securities Exchange Act of 1934 (“**Exchange Act**”), is a member of Financial Industry Regulatory Authority (“**FINRA**”) and the Municipal Securities Rulemaking Board, and is registered with the National Futures Association as an introducing broker pursuant to the provisions of the Commodity Exchange Act. ICE Bonds is the operator of three (3) alternative trading systems (ICE BondPoint, ICE Credit Trade and ICE TMC) for the trading of fixed income products, including corporate, municipal, and U.S. Treasury and agency securities. ICE Bonds offers market participants with electronic markets that support multiple fixed income trading protocols, including click-to-trade, request-for-quote, and auctions, including portfolio auctions.

ICE Bonds supports the implementation of rules designed to improve transparency in fixed income markets and facilitate the electronic trading markets for fixed income securities. While ICE Bonds generally supports extending the requirements of Regulation ATS to ATSS that trade government securities, repurchase agreements and reverse repurchase agreements on government securities (“**Government Securities and Repos**”), as proposed by the Commission, ICE Bonds believes that some of the proposed requirements are unnecessarily burdensome,

¹ 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, Exchange Act Release No. 90019 (Sept. 28, 2020), 85 FR 87,106 (Dec. 31, 2020).

² As defined under Section 3(a)(42) of the Exchange Act.

³ See ATS-G Proposal at 87,106.



particularly for ATSS with low volume in such securities and for new entrants, and could negatively impact the continued development of electronic trading in Government Securities and Repos.

Accordingly, ICE Bonds recommends that the Commission eliminate the exemption from Regulation ATS for ATSS trading Government Securities and Repos, but not adopt the heightened and burdensome separate regulatory framework for such ATSS as it proposes. Instead, ATSS trading Government Securities and Repos would be subject to the same regulatory requirements under Regulation ATS as ATSS trading other non-NMS Stock securities. Alternatively, ICE Bonds believes that a registered ATSS trading Government Securities and Repos with less than the 5% volume threshold set forth by the Commission⁴ in such securities should not be subject to any heightened requirements for Government Securities ATSS, including the prohibition on trading securities other than Government Securities and Repos, the filing of Form ATS-G, and the additional requirements as a Government Securities ATSS. Applying these more burdensome requirements only to the largest ATSS trading government securities would not cause smaller ATSS that currently offer Government Securities and Repos to cease operating and would continue to encourage new entrants.

I. Proposed Elimination of Exemption for ATSS Trading Government Securities and Repos and New, Separate Regulatory Requirements for Such ATSS

ICE Bonds supports the Commission's proposal to eliminate the exemption under Rule 301(a)(4)(ii)(A)-(C) of Regulation ATS.⁵ Eliminating this exemption alone, without the other proposed, additional requirements for Government Securities ATSS, would increase the transparency and oversight of ATSS that limit their securities activities to Government Securities and Repos and registered as a broker-dealer or is a bank ("**Currently Exempted Government Securities ATSS**")⁶ by requiring such ATSS to comply with the same requirements as ATSS trading non-NMS Stock.

However, the Commission's proposal goes much further than eliminating the current exemption on which Currently Exempted Government Securities ATSS rely. These proposed additional, significant requirements on Government Securities ATSS would impose new burdens and require changes to the operation of currently registered ATSS that trade non-NMS Stock together with Government Securities and Repos that are unnecessary to achieve the Commission's goals and contrary to the goal of facilitating the transparent trading of Government Securities and Repos on electronic trading systems. These additional requirements and their associated costs could lead to an ATSS that currently trade Government Securities and Repos along with other fixed income securities to cease offering Government Securities and Repos, particularly if Government Securities and Repos are a relatively small portion of the

⁴ This is the volume threshold that the Commission proposes for applying the Fair Access requirement to a Government Securities ATSS.

⁵ 17 CFR 242.301(a)(4).

⁶ See ATS-G Proposal at 87,109-87,110.



ATS's trading volume. For the same reason, the proposals requirements would discourage new entrants, leading to reduced competition and innovation in the electronic trading of government securities markets. Further, it's possible that some entities will structure their businesses to avoid being classified as an "exchange,"⁷ by operating electronic trading platforms that offer trading protocols, such as voice-hybrid or request-for-quote protocols, avoiding the new proposed requirements.

The Commission states that there are twenty-six (26) Government Securities ATSS, only seven (7) of which currently operate in reliance on the exemption from exchange registration the Commission proposes to eliminate (i.e. the Currently Exempted Government Securities ATSS).⁸ The remaining nineteen (19) ATSS that would be impacted by the proposal are already registered with the Commission both as a broker-dealer and as an ATS ("**Legacy Government Securities ATSS**") and are therefore currently subject to oversight by the Commission and FINRA. The Commission's proposal would impose significant new requirements on these Legacy Government Securities ATSS, but the Commission does not explain why the regulatory framework under which they currently operate is inadequate.

A. Proposal to require that Government Securities and Repo ATSS trade only Such Securities Serves No Regulatory Purpose and Imposes Costs

The Commission proposes that all Government Securities ATSS establish a separate ATS for trading Government Securities and Repos. Accordingly, Legacy Government Securities ATSS would be required to separately register and operate an ATS solely for their Government Securities and Repos. The Commission, however, does not identify any problems with the way in which Legacy Government Securities ATSS currently operate or with its oversight of these ATSS. The Commission also does not explain why requiring a Legacy Government Securities ATSS to separate out its Governments Securities and Repos trading into an ATS separate from its other non-NMS Stock ATS would improve the Commission's oversight or advance its other goals. While the Commission notes that its proposal to require separation of Government Securities and Repos is the same approach it applies to broker-dealers that operate ATSS for NMS Stock, the Commission does not offer an explanation as to why that approach is appropriate for ATSS trading Government Securities and Repos, a market very different from the market in NMS Stock. In fact, the Commission does not even acknowledge these differences. Nor does the Commission explain why such separation is necessary to meet its regulatory goals.

A Legacy Government Securities ATS offers to its subscribers the ability to trade on one venue instruments with correlated trading activity, such as corporate debt securities and US Treasuries. For example, a subscriber to an ATS has the ability to purchase a corporate bond while selling a treasury bond of the same maturity as a hedge to the position. Part of the convenience of doing these transactions electronically is the ability to do them in a centralized location. If a subscriber has to execute the corporate bond on one ATS and then sell the treasury

⁷ See 17 CFR 240.3b-16.

⁸ See ATS-G Proposal at 87,162 -87,163.



(hedge) on a different ATS, there is an administrative and operational burden placed on the subscriber, as well as additional economic and market risk to the subscriber as the price on the other venue may move by the time the hedge trade is initiated. By requiring that Government Securities and Repos be traded on a separate ATS from other fixed income securities trading on an ATS, the Commission's proposal eliminates these types of hedging activities, at least on an ATS. Market participants may instead choose to move that activity to the myriad other trading venues available where the regulatory framework does not preclude such activity, including bilateral dealer markets,⁹ which may result in less transparency rather than more.

While each Legacy Government Securities ATS is different, removing government securities from one ATS to a new dedicated Government Securities ATS is not a costless exercise. Setting aside the lost opportunity cost that would attach from needing to shift development resources from other projects, the initial set-up of a new Government Securities ATS would require, among other things, the development of (i) a matching engine, (ii) separate connectivity for subscribers, (iii) new clearing connectivity, (iv) additional personnel to support trading operations of the Government Securities ATS,¹⁰ and (v) regulatory controls (e.g. Rule 15c3-5). ICE Bonds believes that this segregation requirement will ultimately lead to fewer venues for subscribers to trade and hedge and concentrate trading among a few large Government Securities ATSS, as smaller Legacy Government Securities ATSS may determine that this separation requirement is cost prohibitive.

One consequence of a concentration of trading on a few venues is that it increases the risk that a technology failure could have a more significant impact than in a marketplace where the number of trading venue choices is larger. Further, were this to come to fruition, the few remaining Government Securities ATSS would in effect wield pricing power over market participants (notwithstanding the requirement to disclose fee arrangements),¹¹ as there would be fewer trading venues for market participants to transact in Government Securities and Repos.

B. The Initial Form ATS-G and Ongoing Filing Requirements are Unnecessarily Burdensome for Government Securities ATSS with Limited Volume

Legacy Government Securities ATSS have a Form ATS on file and provide the Commission with required regulatory information (i.e. amended Form ATS, ATS-R, etc.). In the ATS-G Proposal, the Commission proposes that Government Securities ATSS, including Legacy Government Securities ATSS, be subject to the same pre-effectiveness review of Form ATS-G as ATSS for NMS Stocks.

⁹ See ATS-G Proposal at 87,163.

¹⁰ See 17 CFR 242.301(b)(10)(i)(A) which requires that confidential trading information of subscriber be limited to just those employees of that support the operation of the respective alternative trading system. A broker-dealer required to operate separate ATSS for its Government Securities and Repos may be required to have different support staff in order to comply with Rule 301(b)(10).

¹¹ See *id* at 87,141.



ICE Bonds believes that the Commission’s imposition of an “effectiveness” regime to Form ATS-G is an unnecessary administrative burden on Government Securities ATSS, and will be particularly burdensome on those Government Securities ATSS with limited volumes in government securities. ICE Bonds recommends that the Commission subject Government Securities ATSS to the requirements of Rule 301 in the same manner as ATSS that trade corporate and municipal debt today.

C. Requiring Public Disclosure of Form ATS-G Reports is will be of Limited Value to Market Participants and is Anti-Competitive

The Commission proposes to impose a more demanding disclosure obligation on Government Securities ATSS than on operators of other electronic trading systems that trade government securities.¹² More specifically, the ATS-G Proposal would require detailed public disclosure of information relating to, among other things, an ATS’s manner of operation, organizational infrastructure, conflicts of interest and fee schedules. The Commission noted in its ATS Market Share Analysis that approximately 43% of U.S. Treasury securities and 13% of Agency securities are currently traded on Government Securities ATSS.¹³ The Commission also observes that almost all of the trading in the dealer-to-customer market in government securities is on non-ATSS. Therefore, the majority of the volume in government securities continues to be traded away from Government Securities ATS and would not be impacted by the Commission’s proposal.

While ICE Bonds strongly supports initiatives designed to promote transparency, including the provision of meaningful disclosure to market participants, the Commission’s proposal will do nothing to allow market participants to compare Government Securities ATSS with non-ATS trading venues. While the disclosure will allow market participants to make comparisons among Government Securities ATSS, this represents well less than half the market, and if the disclosure requirements are too burdensome or impair the ability of Government Securities ATSS to compete, it will discourage the expansion of ATSS and potentially encourage operators of Government Securities ATS to restructure their operations to avoid being characterized as an ATS, which would ultimately result in less transparency rather than more. Instead, we recommend that the Commission require any trading venue that permits trading in Government Securities and Repos to provide uniform disclosures regarding their activities.

II. Application of Fair Access Requirement to Government Securities ATSS

The Commission requests comment on whether the proposed fair access volume threshold should be (i) applied to all types of U.S. Treasury Securities or to a subset(s), and (ii) aggregated across commonly controlled ATSS for broker-dealers that operate multiple ATSS.

¹² See *id* at 87,177. Where the Commission notes that Government Securities ATSS compete with unregulated platforms operated by interdealer brokers and dealers.

¹³ ATS-G Proposal at 87,178.



ICE Bonds believes that the 5% volume threshold should apply to U.S. Treasury Securities in the aggregate, as proposed by the Commission and as is currently done for both corporate debt securities and the municipal securities asset classes. To avoid discouraging the availability of trading of government securities on ATSS, ICE Bonds also believes that the proposed fair access volume thresholds should be determined at an individual ATS level and not aggregated across commonly controlled ATS, as proposed by the Commission. A broker-dealer may operate separate ATSS, based on separate business units within the broker-dealer, different technology backbones, or different types of functionality, such as anonymous or fully disclosed order books or auction-based offerings. Each ATS is unique and the aggregation of volume to meet the fair access thresholds runs contrary to operating these distinct ATSS.

III. Form ATS-G Considerations

The Commission requests comment on whether the information about written safeguards and written procedures to protect the confidential trading information of subscribers described in Form ATS-G would be sufficient for subscribers to independently evaluate such safeguards and procedures and thus evaluate the ATS as a destination for their orders.

ICE Bonds believes that the Rule 301(b)(10) requirement to maintain written safeguards and procedures to protect confidential subscriber information is sufficient protection without a public posting of the means and manner of implementation. It is unclear what level of detail an ATS operator would feel comfortable providing in a public format that would in turn be beneficial to a subscriber. Publication of compliance procedures/processes is not commonplace and risks requiring disclosure of proprietary information.

The Commission requests comment as to whether it should prohibit disclosure of confidential subscriber information in some circumstances. ICE Bonds does not believe the Commission should exercise its own judgement as to what it deems to be confidential subscriber information. A broker-dealer operator of an ATS should be free to enter into agreements with its subscribers regarding the characterization and treatment of subscriber confidential information. These matters are clearly covered under state contract law.

IV. Proposed changes to Form ATS and Form ATS-R

ICE Bonds has no objections to the Commission's proposal to disclose information about the types of securities traded by ATSS that have an active Form ATS filed with the Commission. In addition, ICE Bonds has no comments on the Commission's proposed changes to the information filed on Form ATS and Form ATS-R.

The Commission requests comment on whether it should amend Form ATS to add, change, or modify any of the requests for information on Form ATS. ICE Bonds requests that Exhibit F be amended to follow the same structure as Exhibit G. ICE Bonds believes that the information required in Exhibit F is important and an essential part of Form ATS. However, the



manner in which the form requires information to be provided is not conducive to the workflow of an actual ATS. We request that ATS operators be provided with a little latitude in the manner in which the information is provided to the Commission.

The Commission has requested comment as to whether it should make Form ATS, Form ATS-R or any related disclosures public. ICE Bonds is generally in support of efforts by the Commission to promote transparency. However, unless public disclosure is uniformly applied to all electronic trading venues that trade fixed income securities/government securities (i.e. both ATSs and non-ATS trading platforms), market participants will continue to suffer from a lack of information. The requirement to provide market participants with important disclosures should not result in a competitive disadvantage for ATSs, as compared to their non-ATS competitors. We believe that the disclosures proposed by the Commission are relevant to market participants, regardless of the characterization of the trading venue.

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We hope these comments are constructive to SEC as it considers further changes to Regulation ATS. To the extent the Commission should have any questions relating to this letter please feel free to contact us, as we would appreciate the opportunity to speak with the Commission about these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Laorno', with a stylized flourish at the end.

Robert Laorno
General Counsel, ICE Bonds Securities Corporation