



March 15, 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 (“**Concept Release**”)¹

Dear Ms. Countryman:

ICE Bonds Securities Corporation (“**ICE Bonds**”) appreciates the opportunity to respond to the Concept Release² issued by the U.S. Securities and Exchange Commission (“**SEC**” or the “**Commission**”) soliciting comment on electronic corporate bond and municipal securities markets. The Commission’s questions are designed to “help the Commission and other regulators evaluate potential regulatory gaps that may exist among these platforms with respect to access to markets, system integrity, surveillance, and transparency, among other things.”³ ICE Bonds is encouraged that the Commission is reviewing the state of today’s electronic trading marketplace for fixed income securities and considering whether current regulation is sufficient to capture the myriad electronic trading platforms that perform core marketplace exchange functions.

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 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 electronic markets that support multiple fixed income trading protocols, including click-to-trade, request-for-quote, and auctions, including portfolio auctions.

ICE Bonds supports changes to the Commission’s rules that would bring fixed income electronic trading platforms performing marketplace exchange functions under Commission oversight. As the Fixed

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 See *id* at Section VIII.

³ See *id* at 87,157.



Income Market Structure Advisory Committee (“**FIMSAC**”)⁴ noted, until the regulatory regime for electronic platforms embraces all the relevant players, the goal articulated by the SEC in adopting Regulation ATS of “strengthen[ing] the public market for securities, while encouraging innovative new markets”⁵ will not be fully realized. We agree with FIMSAC’s views and believe that incorporating all fixed income electronic trading platforms performing marketplace functions into the Commission’s regulatory framework would improve transparency in, strengthen the integrity of, and foster competition in the fixed income markets. The current inconsistent regulatory treatment of electronic trading platforms for fixed income securities, under which some platforms performing marketplace functions are regulated as alternative trading systems (“**ATs**”) by the Commission and FINRA, some are regulated only as broker-dealers, and some platforms are not regulated at all, does not promote such goals. Rather, it works to undermine them.

I. Fixed Income Electronic Trading Platforms are Subject to Inconsistent Regulation

Since the adoption of Regulation ATS in 1998, the trading of corporate and municipal bonds has steadily moved away from primary dealers and interdealer brokers who arrange trades over the telephone to a marketplace where a substantial volume of trades is effected on electronic trading platforms. Today’s fixed income electronic trading platforms range from single dealer systems, inter-dealer systems, ATs, broker-dealers who take in direct feeds from multiple liquidity providers and even unregulated electronic trading platforms.⁶

Many fixed income electronic trading platforms are operated by registered broker-dealers also registered with the Commission as ATs. However, there is a significant volume of fixed income securities traded today on electronic trading platforms that are neither registered as exchanges nor as ATs (“**non-ATS trading platforms**”).⁷ Non-ATS trading platforms that are operated by a broker-dealer are subject to fewer regulatory requirements than ATs. Electronic trading platforms operated by unregulated entities are subject to no regulatory requirements, in sharp contrast to ATs and their broker-dealer operators, which are subject to Commission and FINRA oversight and examination, regular/continuous reporting of ATS trading activity and various Commission and FINRA rules relating to investor protection. These significant regulatory burdens on ATs puts them at a competitive disadvantage to non-ATS trading platforms that are not subject to these same regulatory obligations.

⁴ See U.S. Securities and Exchange Commission Fixed Income Market Structure Advisory Committee, Recommendation for the SEC to Review the Framework for the Oversight of Electronic Trading Platforms for Corporate and Municipal Bonds (July 16, 2018) (“**FIMSAC Recommendation**”), available at <https://www.sec.gov/spotlight/fixed-incomeadvisory-committee/fimsac-electronic-tradingplatforms-recommendation.pdf> (noting that, “[w]ithout a unifying regulatory framework for all fixed income electronic trading platforms, market structures will likely fragment further as regulators adopt new regulations that apply to only one type of platform.”).

⁵ See Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (Dec. 8, 1998), 63 Fed. Reg. 70,844, 70,845 (Dec. 22, 1998) (“**Reg ATS Adopting Release**”).

⁶ See FIMSAC Recommendation (noting that “at least one fixed income trading platform with significant volume in the municipal and corporate bond trading does not fall under any regulatory oversight in the U.S.”).

⁷ See *id.* (noting that “a large and growing fraction of the corporate and municipal bond volumes that trade electronically in the U.S. today occurs on systems regulated **only** as broker-dealers.” (emphasis added)).



Moreover, the lack of transparency⁸ and appropriate regulatory oversight of non-ATS trading platforms performing core marketplace functions, particularly in light of the significant trading volume in fixed income securities (e.g., corporate and municipal bonds) that these platforms represent in the marketplace, warrants greater oversight by the Commission. These non-ATS trading platforms generally fall into one of the following categories:

- (i) Non-ATS trading platforms operated by unregulated entities that offer a click-to-trade execution protocol. In a click-to-trade scenario, one user may interact with another counterparty on a fully disclosed basis by transacting against a displayed bid or offer market.
- (ii) Non-ATS trading platforms operated by unregulated entities that offer a request-for-quote (“**RFQ**”) execution trading protocol. In a RFQ scenario, one user may interact with one or multiple dealers by sending a request for quote on a fully disclosed basis.
- (iii) Non-ATS trading platforms operated by broker-dealers that support a fully disclosed click-to-trade model that permits a user to send an execution request (essentially an RFQ) to any number of disclosed counterparties with displayed trading interest (i.e. price, quantity and direction) on that system.
- (iv) Non-ATS trading platforms operated by broker-dealers that aggregate liquidity from multiple sources, such as market data provided by ATSS and direct feeds from individual dealers. These non-ATS trading platforms then provide retail clients with the ability to transact either directly on that non-ATS trading platform or through other means, such as voice assist or a messaging services.

The operators of these non-ATS trading platforms argue that their systems fail to satisfy at least one (if not more) of the essential elements of the Rule 3b-16 exchange definition and are therefore not required to register as an ATS.⁹ For instance, the non-ATS trading platforms that have adopted an RFQ model argue that their systems do not *execute transactions according to established, non-discretionary rules or procedures*.¹⁰ However, we note that some of these systems provide their users with system administered auto-execution rule sets that the user applies through an option setting on the non-ATS trading platform.

Notwithstanding these arguments, we believe that when an electronic trading system, such as the Non-ATS trading platforms described above, organizes the trading interest of thousands of different

⁸ We encourage the Commission to work with FINRA to enhance the trade reports made to FINRA’s Trade Reporting and Compliance Engine (TRACE) to require a new indicator be populated identifying the non-ATS electronic trading venue where a transaction was effected by a FINRA member. FINRA has recently requested comment on such an indicator in connection with U.S. Treasury securities (See FINRA Regulatory Notice 20-43, December 23, 2020) available at <https://www.finra.org/sites/default/files/2020-12/Regulatory-Notice-20-43.pdf>.

⁹ We note that for other product types, such as credit default swaps, platforms that offer these same features in the United States are currently regulated by the Commodities Futures Trading Commission as swap execution facilities. In Europe, platforms that provide these features are regulated as investment firms, and as operators of multilateral trading facilities or organized trading facilities.

¹⁰ Reg ATS Adopting Release at 70,900.



users, provides trading functionality, either through messaging (e.g. RFQ) or routing/matching features (e.g. click-to-trade), that permits the execution of securities transactions, and couples that execution with other fundamental features of an exchange or ATS, such as order/execution management, confirmation delivery and straight-through-processing, then that non-ATS trading platform acts as an ATS in bringing together the orders of multiple buyers and sellers. The impact on and importance to the fixed income markets taken as a whole warrants such entities being regulated as ATSs.¹¹

ICE Bonds encourages the Commission to tailor its application of Regulation ATS to fixed income electronic trading platforms that operate varying business models, including the non-ATS trading platforms described under (i) - (iv) above that perform marketplace functions. This change would subject non-ATS trading platforms to the same regulatory obligations as currently registered ATSs, which are designed to protect investors and the integrity of the fixed income markets. The benefits to the market will be substantial. For example, some of the non-ATS trading platforms are not currently subject to Rule 15c3-5 (Risk Management Controls for Brokers or Dealers with Market Access or the “Market Access Rule”),¹² Rule 301(b)(10) (protection of subscribers’ confidential trading information),¹³ Rule 17a-3 and 17a-4 (Books and Records Requirements),¹⁴ Bank Secrecy Act, FINRA TRACE reporting obligations and certain other investor protection obligations like FINRA Rule 5310 (Best Execution and Interpositioning).

II. Requiring Public Disclosure of Form ATS and Related Operational Procedures will be of Limited Value to Market Participants and is Anti-Competitive

The Commission requests comment on the imposition of a disclosure obligation on fixed income ATSs that is similar to the type of disclosures currently required of NMS Stock ATSs. More specifically, the Commission requests comment as to whether broker-dealer operators of fixed income ATSs should be required to make public Form ATS and provide detailed public disclosure of information relating to, among other things, an ATS’s manner of operation, organizational infrastructure, and ATS-related activities of the broker-dealer operator and its affiliates.

While ICE Bonds strongly supports initiatives designed to promote transparency, including the provision of meaningful disclosure to market participants, the Commission’s proposal would do nothing to allow market participants to compare fixed income ATSs with non-ATS trading platforms. In addition, ICE Bonds believes that if the disclosure requirements are too burdensome or impair the ability of fixed income ATSs to compete, it may discourage the expansion of ATSs and potentially encourage operators of fixed income ATSs to restructure their operations to avoid being characterized as an ATS, which would ultimately result in less transparency rather than more. Instead, we encourage the Commission to tailor its application of Regulation ATS so that it applies equally to ATSs and to fixed income electronic trading platforms that perform marketplace functions notwithstanding their business models.

¹¹ We also believe that if some of these non-ATS trading platforms were subject to Regulation ATS, they may be obligated to comply with a number of the additional obligations that high volume ATSs are currently subject to, such as the Fair Access Rule (17 CFR 242.301(b)(5)) and the Capacity, Integrity, and Security of automated systems rule (17 CFR 242.301(b)(6)).

¹² 17 CFR 240.15c3-5.

¹³ 17 CFR 242.301(b)(10).

¹⁴ 17 CFR 240.17a-3 and 17 CFR 240.17a-4.



III. Application of the Fair Access Rule, Capacity, Integrity and Security Rule and Regulation SCI to Fixed Income ATSS and Other Platforms that Trade Fixed Income Securities

The Commission requests comment as to whether the current volume thresholds applicable to the Fair Access Rule (Rule 301(b)(5)) and the Capacity, Integrity and Security Rule (Rule 301(b)(6)) are appropriate for fixed income ATSS and whether these rules should be applied to other platforms that trade fixed income securities. ICE Bonds believes that the respective current volume threshold requirements are appropriate to capture ATSS with a significant percentage of the trading volume in corporate debt securities and municipal securities. ICE Bonds further believes that the current requirements of the Fair Access Rule are appropriate for fixed income ATSS generally.

The Commission also requests comment on whether fixed income ATSS should be subject to the requirements of Regulation SCI instead of the Capacity, Integrity, and Security Rule. ICE Bonds would support the application of Regulation SCI instead of the Capacity, Integrity, and Security Rule to fixed income ATSS once a fixed income ATSS meets the 20% volume threshold test currently used under the Capacity, Integrity, and Security Rule.

Finally, with respect to the Commission's question on whether the Fair Access Rule and the Capacity, Integrity and Security Rule should apply to platforms that trade fixed income securities but are not fixed income ATSS, ICE Bonds believes that fixed income ATSS are competitively disadvantaged and that market participants are harmed when electronic trading systems that perform marketplace functions in fixed income securities are not subject to the same requirements as a fixed income ATSS. If the regulatory obligations of operating a fixed income ATSS become too burdensome or impair the ability of fixed income ATSS to compete, it may discourage the expansion of ATSS and potentially encourage operators of fixed income ATSS to restructure their operations to avoid being characterized as an ATSS. Instead, we encourage the Commission to tailor its application of Regulation ATSS so that it applies equally to ATSS and to fixed income electronic trading platforms that perform marketplace functions notwithstanding their business models and then subject all such platforms to a common set of standards.

IV. Additional Areas that Warrant Consideration by the Commission

In connection with the regulation of fixed income ATSS, ICE Bonds would like to take this opportunity to highlight areas we believe warrant further consideration by the Commission.

1. Accrued Interest

ICE Bonds recommends that the Commission work with FINRA to issue clear guidance on whether bonds should trade with or without accrued interest. Such guidance would help promote consistency with the calculation of accrued interest based on announcements made by an issuer. Currently, some market participants trade a bond without accrued interest only if the issuer defaults. However, other market participants may trade a bond without accrued interest based on events such as a missed interest payment or the expectation of a missed interest payment. Providing clear standards on this matter would promote the transparency and integrity of the fixed income marketplace.

2. Pennying

ICE Bonds encourages the Commission to work with FINRA and the MSRB to publish clear guidance on what constitutes abusive pennyng and then seek to dissuade the practice through examinations and enforcement. For a further discussion on ICE Bonds' view on pennyng, please see



Letter from Peter Borstelmann, President, ICE Bonds Securities Corporation, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated October 16, 2020.¹⁵

To summarize Mr. Borstelmann's letter to FINRA, ICE Bonds supports blind bidding to incentivize bidders (both external and the auction initiator) to provide their best prices, resulting in a more competitive auction process. ICE Bonds further believes that the initiating firm should be required to participate in the auction on a competitive basis if it wishes to internalize the trade. Absent a competitive bid by an initiating firm, internalization should not be permitted. Finally, we believe that blind bidding improves market efficiency and competition because market participants know that all bidders are subject to the same auction terms.

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We hope these comments are constructive to the SEC as it considers further changes to the regulatory framework for the electronic trading systems that trade fixed income securities. 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 'R. Laorno', with a stylized flourish at the end.

Robert Laorno
General Counsel
ICE Bonds Securities Corporation

¹⁵ See Letter from Peter Borstelmann, President, ICE Bonds Securities Corporation to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated October 16, 2020, found at: <https://www.finra.org/sites/default/files/NoticeComment/ICE%20Bonds%20Securities%20-%20Peter%20Borstelmann%20-%20Notice%202020-29.pdf>.