



BIDS Trading, L.P.
111 Broadway, Suite 1603
New York, NY 10006
212.618.2060
www.bidstrading.com

February 26, 2016

VIA EMAIL

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-23-15: Securities and Exchange Commission; Regulation of NMS Stock
Alternative Trading Systems

Dear Mr. Fields:

BIDS Trading L.P. ("BIDS") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or the "Commission") proposed Regulation of NMS Stock Alternative Trading Systems,¹ which would amend the regulatory requirements in Regulation ATS ("Regulation ATS") under the Securities Exchange Act of 1934, among other regulations ("Proposal"). BIDS generally supports the Commission's goals of enhancing the transparency related to alternative trading systems ("ATS") that trade NMS stocks ("NMS Stock ATSs"). BIDS submits this comment letter to highlight a few areas of the proposal that it would like to see clarified or potentially modified.

1. BIDS Trading

As a matter of background, BIDS is a registered broker-dealer and the owner and operator of the BIDS ATS. The BIDS ATS is an open, flexible platform designed to attract liquidity through its model. BIDS' only business is operating the BIDS ATS. BIDS does not engage in proprietary trading and BIDS does not have any trading affiliates.

The BIDS ATS is designed to bring users together into one single pool of non-displayed ("dark") liquidity in NMS stocks. BIDS ATS participants interact anonymously with each other primarily to trade blocks of equity securities, however, the system is not limited exclusively to block trading. In January 2016, 59.36% of all of BIDS volume was in blocks. BIDS defines a block for this purpose as 10,000 shares or more.

Venues such as the BIDS ATS are distinct from registered exchanges by design and provide a valuable service to the U.S. market. In many regards, ATSs have automated and replaced what

¹ Regulation of NMS Stock Alternative Trading Systems, Exchange Act Release No. 76,474, 80 Fed. Reg. 80,998 (Dec. 28, 2015) ("Proposing Release").

historically was known as the “upstairs” market. ATSS that operate as “dark pools” offer investors the opportunity to electronically enter orders in an effort to seek executions and to minimize the leakage of information into the broader market, which could have a detrimental effect on an investor’s execution.

2. General Comments

BIDS supports the Commission’s efforts to provide greater transparency regarding the operations of ATSS. Nevertheless, BIDS believes that these enhanced requirements should be balanced with maintaining a regulatory structure under which ATSS can continue to innovate and enhance the valuable services provided to investors. Further, BIDS suggests that the Proposal be modified so that the enhanced transparency requirements for ATSS apply to information that is of most use to investors and that is delivered in a form that can be digested and used for evaluation and comparison purposes.

3. Initial Filing of Form ATS-N

BIDS seeks certain clarifications around the process for an existing NMS Stock ATS filing a Form ATS-N.

The proposed Rule 304(a)(1) provides that:

If the NMS Stock ATS is operating pursuant to a previously filed initial operation report on Form ATS as of [effective date of the final rule], such NMS Stock ATS shall file with the Commission a Form ATS-N, in accordance with the instructions therein, no later than 120 calendar days after [effective date of the final rule]. An NMS Stock ATS operating as of [effective date of the final rule] may continue to operate pursuant to a previously filed initial operation report on Form ATS pending the Commission’s review of the filed Form ATS-N.

As noted in the Proposing Release, this provision is intended to “allow the [operating] NMS Stock ATS to continue its current operations without disruption”² during the filing and review period of Form ATS-N. BIDS appreciates that the stated intent of this approach is to allow an operating NMS Stock ATS “sufficient time to make an orderly transition from compliance under the current ATS requirements to compliance with the proposed requirements of Rule 304”³ and that the Commission has an interest in avoiding disruption of the businesses of operating ATSS during the 120 day review period (“Review Period”) of an initial Form ATS-N filing. BIDS believes, however, that this overlap period (which could run as long as 240 days, with an extension) raises certain questions and regulatory risks for ATSS that are operating under a valid Form ATS. BIDS encourages the Commission to adopt an approach to the transition to Form ATS-N by operating ATSS that reduces or eliminates any regulatory or legal uncertainties posed by the existence of two separate documents that are different by design, but intended for the same purpose.

BIDS suggests that the Commission consider making the initial Form ATS-N of an operating ATS effective upon filing and using it as the governing document during the Review Period. The Form ATS-N would still be subject to review and comment by the Commission during the

² Proposing Release, 80 Fed Reg. at 81,023.

³ Id.

Review Period and the Commission would retain the ability to ensure that it meets its standards for final approval under the proposed rule. For example, if the Commission deemed the Form ATS-N to be deficient during the Review Period, an operating ATS would recognize the need to update or amend the Form ATS-N to satisfy the requirements established for Form ATS-N. In addition, this approach would permit legacy ATSs to operate pursuant to one document and make any required amendments due to proposed material changes to the Form ATS-N, and not the Form ATS.⁴

The existing Form ATSs of operating ATSs, under which they would otherwise be operating, are not public documents. BIDS suggests that the same “non-public” approach should carry forward once the Form ATS-N is filed and that the Form ATS-N would only be made public, pursuant to the proposed rule, at the end of the review period. There would be no potential for public harm (e.g., making public an initial Form ATS-N that the Commission may deem incomplete or inaccurate) as a result of adopting this approach as the public would see the form that is finalized and in use.

If the Commission does not determine to make the initial Form ATS-N of an operating ATS effective upon filing, then BIDS seeks clarification as to how an NMS Stock ATS should handle material changes to the existing Form ATS during the Form ATS-N review period. An ATS has an existing obligation to amend its Form ATS at least 20 days prior to implementation of a material change⁵ and, upon filing such an amendment, would need to update its pending Form ATS-N. BIDS requests that the Commission confirm that filing an amendment to the pending Form ATS-N as the result of a material change to the NMS Stock ATS during the Review Period would not affect the tolling of the Review Period (i.e., it would not reset or extend the Review Period).

BIDS is also concerned that the additional and more expansive disclosures required in the Form ATS-N could impact the existing Form ATS. Given that there will be information in the filed Form ATS-N (due to its expansive nature) that is lacking from the existing Form ATS, BIDS raises the following question for further clarification: Should an operating ATS amend its existing Form ATS to avoid any potential liability caused by submitting the additional information requirements in the filed Form ATS-N?

4. Form ATS-N Material Change Amendments

Proposed Rule 304(a)(2)(A) provides that an NMS Stock ATS must amend its Form ATS-N at least 30 days prior to the implementation of a “material change.” BIDS agrees that the appropriate standard for pre-filing amendments is a “materiality” standard, as it is under Regulation ATS today. Nevertheless, BIDS suggests the following clarification and change to the proposed rule so that the standard of what is “material” is clearer and truly reflects significant changes to an ATS.

A. Material Change Definition

BIDS requests that the Commission provide greater clarification of the types of changes that an NMS Stock ATS should deem “material” for the purposes of the filing requirement under proposed Rule 304(a)(2)(A). For example, NMS Stock ATSs regularly update their matching

⁴ The existing Form ATS would be withdrawn upon filing of the Form ATS-N.

⁵ Securities Exchange Act Rule 301(b)(2)(ii).

systems to enhance their efficiencies in an effort to provide an improved subscriber experience and, as such, need a clearer understanding of which changes may be deemed material in order to avoid guesswork around an subjective standard and to avoid instances of either over-reporting or under-reporting changes through amendments.

Without greater clarity, BIDS believes that firms may take the step of over-filing amendments as a matter of regulatory caution. BIDS makes this observation based on the fact that Form ATS-N prescribes a breadth of detail that may cause NMS Stock ATSs to update for changes on fears that they could be deemed material, to avoid the risks associated with not filing. BIDS believes that filing for changes that may not otherwise be material would create a substantial cost of time and resources on NMS Stock ATSs and would greatly burden the Commission staff that will be processing and reviewing these submissions.

B. Public Disclosure of Proposed Amendments

Proposed Rule 304(b)(2)(iv) requires the public disclosure of all “filed Form ATS-N Amendment[s].” BIDS recognizes that the Commission’s intent is to “provide market participants with immediate transparency into the operations of an NMS Stock ATS.”⁶ Further, the Proposing Release states “that making public Form ATS-N Amendments would benefit market participants by allowing them to obtain current information regarding changes to the operation of an NMS Stock ATS.”⁷ BIDS believes that making amendments publicly available upon filing does not serve the stated purpose. A market participant considering using a particular NMS Stock ATS should be able to rely on existing documents for its evaluation. A potential material change would only become truly relevant if it is approved and implemented. A potential participant reviewing proposed amendments that may never make it into production could be potentially confusing and misleading. As a result, the amendments should only be made public once declared effective, or at the expiration of the 30 day review. Upon effectiveness of the material amendment, if a market participant does not like the material change it could choose to stop using that ATS.

5. Uniformity of Disclosures

BIDS suggests that the Commission revise the approach to required disclosures in the Form ATS-N to promote uniformity between the filings of each ATS. In particular, BIDS suggests adopting either check boxes or “yes/no” responses, rather than requiring each ATS to “describe” its various responses. An example of this approach is:

Are orders or other trading interests on the NMS Stock ATS displayed or made known outside the NMS Stock ATS? If yes, please explain.

BIDS recognizes that “yes/no” formatted responses to certain questions may require additional, descriptive information in the Form ATS-N based on the response (e.g., if “yes”, please explain), but BIDS believes the SEC should instruct NMS Stock ATSs to keep such responses simple and direct. BIDS believes ATSs would benefit from examples of short-form responses that such answers should take. BIDS believes that narrowly focusing information requests using this type of format will make the Form ATS-N more user friendly for investors in that it could more easily form an understanding of certain areas of the operation without having to read through a unique,

⁶ Proposing Release, 81,035

⁷ Id.

free-form narrative description from each NMS Stock ATS. Such a format will also make it easier for market participants to compare and contrast NMS Stock ATSS and their functions and offerings with one another.

Further, BIDS recommends that the Commission add definitions for such areas where consistency will benefit market participants (or potential market participants) reading the Form ATS-N. For example, if categories of “subscribers” or “order types and modifiers” were defined, then all NMS Stock ATSS would describe their operations on a basis that would facilitate comparison. Uniform definitions would promote consistency among the various ATS-N filings and, importantly, would afford market participants a better opportunity to compare Form ATS-Ns. BIDS believes that this ease of comparison by market participants is a primary goal of the Commission in adopting the Proposing Release.

Finally, BIDS asks the Commission to consider introducing table formats, where reasonable to capture the disclosure in Form ATS-N. BIDS believes that a table format, combined with uniform definitions would greatly enhance an investor’s ability to compare ATSS.

BIDS Trading thanks the Commission and the staff for its consideration of BIDS’ comments.

Sincerely,



Timothy J. Mahoney
Chief Executive Officer

cc: Mary Jo White, Chair
Kara Stein, Commissioner
Michael Piwowar, Commissioner
Stephen Luperello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets