



The Security Traders Association of New York, Inc.

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Via Electronic Mail (rule-comments@sec.gov)

Mr. Brent Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Securities and Exchange Commission Release No. 34-76474 File No. S7-23-15
Regulation of NMS Stock Alternative Trading Systems

Dear Mr. Fields:

The Security Traders Association of New York, Inc. (“STANY”)¹ respectfully submits this letter in response to the Securities and Exchange Commission’s (“SEC” or the “Commission”) request for comments on its proposal to amend the regulatory requirements in Regulation ATS (“Reg. ATS”) under the Securities Exchange Act of 1934 applicable to alternative trading systems (“ATs”) that transact National Market System (“NMS”) stocks. In general, STANY supports the Commission’s efforts to improve the operational transparency, and enhance the disclosure requirements, for ATs that trade NMS stocks (“NMS Stock ATs”). However, the current proposal should be revised in several key ways to better balance the new requirements with the interests of competition and innovation, as well as to ensure that the disclosure is meaningful and useful to investors.

The Proposed Rule, among other things, would heighten regulatory disclosure requirements for NMS Stock ATs on new Form ATS-N, institute a process by which the Commission would review and declare such registrations effective or ineffective, and increase publicly available information regarding operations of NMS Stock ATs. In addition, the Proposed Rule will create a new reporting regime for the filing of amendments to Form ATS-N and require NMS Stock ATs to memorialize, in writing, safeguards and procedures to protect subscribers’ confidential trading information.

¹ STANY is the voice of the trader in the New York metropolitan area and represents approximately 750 individuals who are engaged in the trading of securities. STANY is the largest affiliate of the Security Traders Association (“STA”), a multinational professional association that is committed to being a leading advocate of policies and programs that foster investor trust, professional ethics and marketplace integrity and that support education of market participants, capital formation and marketplace innovation. As an industry organization of individuals employed in the securities markets, STANY does not represent a single business or business model, but rather provides a forum for trading professionals representing institutions, broker-dealers, ATs, exchanges, and trading centers to share their unique perspectives on issues facing the securities markets.

General Recommendations

STANY supports increased transparency around the operations of NMS Stock ATSs. We fully support the Commission's proposal that NMS Stock ATSs memorialize, in writing, safeguards and procedures to protect subscribers' confidential trading information. We have no objection to the Commission's plans to review and declare registrations effective or ineffective.

On the other hand, small and innovative ATSs will be frustrated by the requirement that changes to their technology must be approved by the Commission prior to implementation. Therefore, we suggest that this requirement, if adopted as proposed, should only apply to larger ATSs with a substantial market footprint to avoid discouraging competitive innovations among NMS Stock ATSs.

We also suggest that amendments to Form ATS-N not be published on the Commission's website until after they have been approved to avoid depriving innovative changes from being disclosed to competitors prior to their initial implementation.

We respectfully present certain other suggested changes to the Proposed Rule, particularly with respect to proposed Form ATS-N so that the enhanced transparency requirements apply to information that is calculated to be of the most use to investors and delivered in a form that makes it possible for investors to evaluate and compare ATSs.

STANY is concerned that requiring the disclosure of certain sensitive and propriety information will have a negative effect on competition and innovation.

In December 1998, the Commission adopted Reg. ATS² to establish a regulatory framework for ATSs. In fashioning Reg. ATS, the Commission sought to "encourage market innovation, while ensuring basic investor protections,"³ and gave securities markets a choice to register either as a national securities exchange or as a broker dealer and comply with Reg. ATS. At the time, the Commission noted that its regulation of markets should both accommodate traditional market structures and provide sufficient flexibility to ensure that new markets promote fairness, efficiency and transparency.

ATSs have played an important role in the innovation and evolution of the market for NMS stocks. Their proliferation is testament to the appetite of market participants for execution choices. Through enhanced competition among trading centers, today's markets afford retail and institutional investors superior executions at significantly reduced costs. ATSs have provided liquidity and, an arguably needed, alternative for institutional investors seeking to trade without announcing the full extent of their trading interest.

There are currently over 40 NMS Stock ATSs which, as the Commission notes, combined account for 15.4% of the dollar trading volume in NMS securities. Individually, many of these NMS Stock ATSs execute less than 1% of this volume. While we agree with the Commission that

² Securities Exchange Act Release No. 40760 (December 8, 1998), 65 FR 70844 (December 22, 1998) (Regulation of Exchanges and Alternative Trading Systems) (Reg. ATS)

³ See *id.* At 70847.

changes since the implementation of Reg. ATS merit considerations of increased transparency, we do not think that the market is mature enough to discount the desire for new, innovative and competitive entrants. Neither the Commission, nor market participants themselves, can judge accurately when enough innovation is enough.

Requested disclosures go beyond what is required to advance the Commission's objectives of transparency and the request for extraneous information may obscure the very information that subscribers and the public would find most relevant.

A. As a way to increase operational transparency, the Commission could simply mandate public disclosure of current Form ATS.

We believe that the transparency which the Commission seeks can be achieved through much less burdensome means than proposed. Form ATS currently requires the disclosure to the Commission of fundamental information that could be useful to market participants seeking to make choices amongst various execution venues. Increased transparency could be achieved by clarifying the requests for information on Form ATS and mandating that it be made public. This would go a long way toward achieving the Commission's goal, while maintaining a regulatory structure under which NMS Stock ATSs can continue to innovate.

B. If Form ATS is replaced by Form ATS-N, we recommend that the Commission take a tiered approach to disclosure, with commercially sensitive information disclosed only to the SEC.

In addition to a more complex reporting regime, Reg. ATS-N seeks public disclosure of information which is potentially sensitive and of a proprietary nature. These burdens are likely to alter the competitive landscape among NMS Stock ATSs and between NMS Stock ATSs and national securities exchanges. Some broker-dealers may reconsider operating an NMS Stock ATS. Equally important, the heightened burden is likely to act as a serious impediment to the entrance of new, innovative, and potentially superior players in the competitive landscape.

While much of the information requested on form ATS-N may be useful to the Commission in its role as regulator, we recommend that the Commission reconsider whether the level of detail and granularity currently prescribed in the Rule Proposal is necessary or indeed optimal for public disclosure.

Examples of information that is commercially sensitive and that could raise concerns if made publicly available include but are not limited to:

- Part II, Exhibit 1 – Seeks a copy of any materials currently provided to subscribers or other persons related to the operations of the NMS Stock ATS. Requiring the public disclosure of certain items such as technical specification documents, customer agreements, and proprietary analytics, may cause NMS Stock ATS operators to limit the amount of information shared with subscribers in order to avoid having to share that information with the public and its competitors. Such information may be more appropriately shared with subscribers and with the Commission for use in its regulatory review.

- Part III, Item 4 and Part III, Item 6— To the extent that a broker-dealer has preferential routing arrangements, it should not be required to disclose the details of such commercial arrangements to the public.

We believe that NMS Stock ATS broker-dealers who are required to provide proprietary information about their smart order routers (SORs) and algorithms may be placed in a disadvantageous position in relation to broker-dealers who do not operate ATSs and will thus be able to keep proprietary information about their algorithms and SORs confidential.

Additionally, in instances where SORs operate outside of the NMS Stock ATS and make routing decisions totally independent of the NMS Stock ATS, the appropriate source of information sought by the Commission is the operator of the SOR, not the operator of the NMS Stock ATS.

- Part III, Item 3 – Form ATS-N should only require disclosure of products and services offered to subscribers at a high level. Commercially sensitive or proprietary information should not be required to be publicly disclosed. The Rule proposal does not draw sufficient distinction between the operation of the NMS Stock ATS and other products and services of the broker-dealer, including agency execution services, market making and algorithms, as an example. As a result, the proposed Form ATS-N requires broker-dealer operators to disclose information that is not directly relevant to subscribers and prospective subscribers having access to information to make informed decisions about routing orders to the NMS Stock ATS. The broker-dealer operator of the NMS Stock ATS provides separate disclosures to clients that route orders to their market making desks, to their smart order routers and who utilize their algorithms. Requiring disclosures in the Form ATS-N appears to be in some cases duplicative and in other cases not appropriate. Disclosures in Form ATS-N should only be required when there is a nexus of interaction that creates an actual or potential conflict of interest.

C. Form ATS-N should be simplified so that the information disclosed can be meaningfully compared by those seeking to make informed decisions.

In addition to placing burdens upon operators of NMS Stock ATSs, the crippling amount of detail called for by the Proposed Rule may result in disclosures that lose their usefulness to the public. We are concerned that the quantity of data which will potentially be disclosed on Form ATS-N will create a very real risk that the disclosure will be ineffective and fail to achieve the Commission’s goal of providing access to information by which market participants can assess the relative merits of various ATSs and find the optimal market for their orders.

For example, Part III of Form ATS-N—Activities of the Broker-Dealer Operator and Affiliates—requires Reg. NMS ATSs to provide information about all shared employees. STANY believes that it would be more useful, to persons accessing risks and potential conflicts, for the Commission to limit the required disclosure to shared employees with access to confidential subscriber information or orders submitted to the ATS. Likewise, information such as the title of the shared employee would add no value to the disclosure. Titles lack standardization across businesses, change often, and do not add any meaningful information by which to access the potential risks or make meaningful comparisons between ATSs. Disclosure of roles/titles of individuals who perform shared services should be generalized so as to minimize focus on

individuals whose identity can be discerned through social media. Moreover, the requirement to make public detailed information about shared employees of NMS Stock ATSS places an unreasonable and unnecessary burden on operators of ATSS to provide information that may not be within their control.

Other examples of requested information that is unnecessary to risk assessment include the names of specific business units and algorithms that trade in NMS Stock ATSS, and detailed information about vendors and their affiliates.

In the interests of transparency and in order to make publically disclosed information useful, the Commission should strive for as much uniformity as possible in the responses which it elicits. STANY suggests that wherever possible, the Commission rephrase questions to prompt yes or no responses which will make it easier for the public to compare features of various ATSS. While we appreciate that it may not be possible to have each question simplified to such an extent, as currently proposed the questions in Form ATSS-N require narrative responses which are likely to vary widely.

Conclusion

The dramatically increased regulatory burden contemplated by operating an ATSS, together with the requirement that ATSS disclose potentially sensitive business information, is likely to materially change the competitive landscape among ATSS and between ATSS and exchanges.

Just like the anticipated decline in market making following the Commission's increased market maker obligations without concomitant benefits, we anticipate some attrition in ATSS as a result of the additional regulatory burdens imposed by the Proposed Rule. We are concerned that stifling innovation or picking winners and losers based on an appetite and financial wherewithal to comply with burdensome disclosure requirements may not be the best way to improve markets.

STANY respectfully suggests that there is a middle ground between no public disclosure, as currently required of Form ATSS, and the taxing requirements of Form ATSS-N under the Proposed Rule. We support the efforts of the Commission to increase operational transparency of NMS Stock ATSS, but request that the SEC balance disclosure with competition. It can do so by establishing disclosure tiers and holding propriety and sensitive information for regulatory use only. The Commission can also increase the usefulness of publicly disclosed information by rephrasing questions to elicit more yes/no responses or otherwise uniform and less narrative information.

STANY appreciates the opportunity to provide comments and recommendations on the Proposed Rule. If the Commission or staff has any questions about our suggestions, please do not hesitate to contact us.

Respectfully submitted,

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CEO/Executive Director