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March 21, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Via Email (rule-comments@sec.gov)

Re: Comment Letter on Proposed Rule: Regulation of NMS Stock Alternative Trading Systems (File No. S7-23-15)

Dear Mr. Fields:

UBS Securities LLC ("UBS") is pleased to provide its views in response to the proposal promulgated by the U.S. Securities and Exchange Commission ("Commission") to amend Regulation Alternative Trading System ("Regulation ATS") to require the disclosure of certain information regarding the activities and operations of NMS Stock ATs and their broker-dealer operators ("Proposal").

Introduction

UBS supports the Commission's longstanding effort to increase transparency in the U.S. securities markets. In the nearly two decades since Regulation ATS was adopted, technology and market structure have significantly advanced. We agree the time is right for a review of the disclosure that is required for ATs.

Between Regulation ATS and Regulation NMS, the Commission has sought to foster a competitive and efficient market structure within the United States. The maintenance of those two fundamental attributes – competition and efficiency – is critical to the continued success and quality of the U.S. equity markets. A new disclosure regime that is developed with those twin goals in mind will provide market participants with actionable information for making routing decisions without imposing unnecessary burdens on the producers or consumers of the mandated information. This competition has spurred the development of diverse functionality, creating the ability for market participants to select trading centers likely to best serve their execution objectives, and thus reducing their overall cost of trading. So long as the different types of functionality are disclosed and the related standards are objectively enforced, we believe ATs should continue to have the flexibility to offer features such as categorization, which enables participants to elect to tailor their interactions with subsets of liquidity aligned to their trading objectives.



The Proposal is primarily designed to provide market participants with greater transparency around the operations of NMS Stock ATSs and potential conflicts of interest that may involve an ATS's broker-dealer operator and affiliates. UBS backs the goal of increasing the public dissemination of meaningful and relevant information regarding ATSs. With a handful of modifications, suggested further below, we believe the Proposal will achieve the Commission's well-intended policy objectives.

While transparency is a worthy goal, the Commission must not lose sight of the potential risk versus reward and value for market participants. Information should be required if it is useful to market participants and addresses either a material conflict of interest or some important feature or functionality. For example, if the Commission wants to shed more light on the manner in which affiliates interact with an ATS, the Commission should focus on that specific range of relationships rather than widely casting the net to capture affiliates that have no interactions or relationship with an ATS. Today's global financial services companies include corporate structures with hundreds (or in some cases thousands) of affiliated companies, though only a small number typically interact with an ATS (either as a customer/subscriber/user or as a service provider). If literally all affiliates are pulled into the realm of disclosure, we are concerned about the potential for frequent updates to the mandated information for reasons totally unconnected to the ATS. These updates would impose an administrative, time-consuming burden on ATS operators; one that provides no commensurate informational benefit to market participants. A flood of irrelevant information is simply more "noise" that needs to be filtered by the recipients.

UBS supports the application of the proposed disclosure regime to ATSs of all sizes. Although an ATS may have a small share of volume relative to the overall equities trading marketplace, it does not necessarily follow that such ATS has a similarly small share of each subscriber's flow. Therefore, the additional disclosure proposed by the Commission is an important step in creating a consistent and fair set of obligations for all NMS Stock ATSs and arming all subscribers and market participants with like information.

UBS Securities LLC is the operator of UBS ATS, currently the largest NMS Stock ATS in the United States according to FINRA volume data.¹ UBS has sought to provide subscribers, customers and the public with helpful information concerning the UBS ATS. For example, UBS publishes on its public website (www.ubs.com/ats) the following documents: Form ATS; Rules of Engagement (i.e. connectivity protocols); and Frequently Asked Questions. Although Regulation ATS does not presently require the public posting of this information, UBS believes it is a best practice for ATSs in the United States. Our publicly available information enables market participants to evaluate the UBS ATS in a well-informed manner. The disclosure also provides the opportunity for market commentators and researchers to study the diverse market structure present in the United States.

UBS believes it is critically important for the Commission to establish consistent disclosure standards for any information required under the Proposal. For transparency to be useful in a diverse marketplace filled with competitors that offer differentiated platforms, the Commission should establish fundamental uniformity in the way information is defined and disclosed. For example, some asset managers have suggested the idea of using a standardized template of questions that require a binary

¹ See <https://ats.finra.org/TradingParticipants>



Yes/No response. For certain types of queries, this approach has merit because it could empower consumers of the information to efficiently and effectively compare multiple platforms.

ATS Filing Requirements

Under the Proposal, the Commission would amend the filing process for NMS Stock operators. Specifically, the Proposal would require the Commission to assess each Form ATS-N submitted by an operator as an initial filing. Unless the Commission were to deem its Form ATS-N effective, an NMS Stock ATS could not begin trading. Subsequently, any "material" amendments would be considered ineffective within 30 calendar days of submission if the Commission determined the Form ATS-N was "materially deficient." Therefore, if an amendment were to be declared ineffective, the NMS Stock ATS could not move forward with the proposed changes embodied in the amendment.

For this requirement to function well and in a consistent manner, a definition or clear understanding of the term "material" is essential for a common application of the rule across NMS Stock ATSs. For example, the Proposal states "[s]cenarios that are particularly likely to implicate a material change [include] ... a change of service provider to the operation of the NMS Stock ATS that has access to subscriber confidential subscriber trading information." This passage intimates the Commission may potentially read into the rule a very broad interpretation of materiality. Without descriptive and informative commentary from the Commission, there will be uncertainty and disparity as to which ATS changes are actually filed by ATS operators. Therefore, UBS suggests the Commission provide a clear set of standards that would trigger a Form ATS-N amendment. It may be worth considering an approach that leverages the Regulation SCI framework of major changes determined to be material. Such an approach also would help ensure consistency between different Commission regulations that impact and govern ATSs.

To avoid confusion in the public domain, we would suggest the Commission only make public those Forms ATS-N that are deemed effective (whether initial filings or subsequent amendments). We believe this practice would minimize potential uncertainty, and users of the information would reliably know the features described were deemed effective. Otherwise, market participants may not clearly understand the current state of an NMS Stock ATS versus the proposed/future state. Along these same lines, UBS believes the Commission's goal of providing subscribers with adequate notice of material changes would be better implemented if it were required only after a change was deemed effective, but before the change became operative. For example, the Commission could build in a minimum notice/waiting period following any change deemed effective (e.g., ten business days) to provide subscribers with an opportunity to digest the change before the modification went live into production.

Disclosure of Standardized Materials

UBS supports the Commission's efforts to ensure that subscribers enjoy equal avenues of access to information. Rather than requiring materials to be posted centrally through the Commission, however, UBS would encourage the Commission to allow an NMS Stock ATS to post its disclosure materials on its public website. Also, in lieu of attaching marketing materials (which are subject to change on a fairly regular basis) as an exhibit to each Form ATS-N, we instead would suggest the most recent version of ATS-focused marketing materials be prominently posted in close proximity to the publicly available Form ATS-N information. Requiring a formal amendment to Forms ATS-N every time an ATS wishes to change or enhance marketing materials and similar disclosure would create additional filing and administrative burdens. We believe the Commission should facilitate the free flow of information and reduce friction



wherever possible. This is one such area; in our view, public disclosure provided via a public website achieves the Commission's goals just as effectively.

Public Notice and Comment Period

The Commission asked whether a public notice and comment period is appropriate before the Commission declares a Form ATS-N effective. We do not support that approach for ATSs. A public notice and comment mechanism is necessary and appropriate for exchanges because Regulation NMS effectively requires broker-dealers to route orders to exchanges, including those with *de minimis* market share. This same concept of forced participation does not apply to ATSs. If a subscriber believes the changes made by an ATS do not suit the subscriber's trading requirements, the subscriber is empowered to immediately stop routing its orders to the relevant ATS. No such choice exists with respect to exchanges. Moreover, the Commission has long recognized the important and fundamental differences between exchanges and ATSs (e.g., status as SRO with disciplinary authority, participation in developing and governing NMS plans, direct receipt of allocations from NMS market data revenue pools, protected quote status, ability to list shares for trading). Imposing on ATSs the same public notice and comment period that applies to exchanges would not be equitable, and it would impede the dynamic market structure advances that have surfaced in the US because the Commission has rightly fostered nimble competition among different forms of trading venues.

Governance Structure

Governance structures are likely to vary materially from ATS to ATS depending upon a number of factors. We believe the Commission's goals in this area would be best served by the Commission's OCIE staff testing and verifying appropriate governance as part of their regular examination efforts.

Part III: Defining the term "Affiliates"

The Proposal states: "For the purposes of the proposed disclosures regarding affiliates of the broker-dealer operator, the Commission is proposing to define the term 'affiliate' to mean with respect to a specified person, any person that directly, or indirectly, controls, is under common control with, or is controlled by, the specified person." Although this customary definition of "affiliate" describes which related entities would be considered an affiliate of the broker-dealer operating the NMS Stock ATS, the definition is not limited in any way that focuses on direct interactions or relationships with the NMS Stock ATS.

As an example, UBS Securities LLC currently has well over 300 global affiliates under the definition set forth in the Proposal. Of course, not all such affiliates are users of the UBS ATS. In fact, only orders routed by a small number of affiliates end up in UBS ATS. However, as currently proposed, UBS would need to disclose each and every affiliate regardless of whether it has any interactions with the UBS ATS. Furthermore, in many large, global financial service companies, the list of affiliates will regularly change, either as part of new business initiatives or as part of corporate restructuring and resizing. Requiring an update to the Form ATS-N for ministerial and administrative changes is not a productive use of resources, and, for those attenuated affiliates with no connection to the subject ATS, the exercise is devoid of information useful to subscribers and market participants.

Based on our dialogue with clients, we believe the central concern around affiliate relationships is focused on whether an affiliated entity has differentiated or unique access to an ATS. In other words, the scrutiny is directed to any potential conflict that could arise if an affiliate were given some



preference or special treatment that enabled it to access an ATS in a beneficial or advantageous manner relative to other users or subscribers. Therefore, we recommend that the Commission only require information on ATS affiliates that receive some sort of differentiated or unique access.

Part III, Item 1: Non-ATS Trading Centers

Under the Proposal, most full-service broker-dealer ATS operators would be required to disclose a large array of trading centers across various businesses. The information is of limited relevance to subscribers, except to the extent a non-ATS trading center has some connection or access to the NMS Stock ATS (which in fact is required to be disclosed by a separate section of the Proposal). In addition, the proposed disclosure could act to prejudice a commercial strategy.

The underlying goal in the Proposal appears to be a fulsome disclosure of circumstances where subscriber orders or other trading interest could leave an NMS Stock ATS and be made available to other areas of the broker-dealer operator. UBS supports this goal in concept and agrees that subscribers and market participants are entitled to know such information. However, we believe the Commission's goal could be achieved through simplified disclosure by simply rewording the proposed form to require part (a) only if any of parts (b)(i)-(iii) are relevant and applicable. UBS also believes the phrase "subscriber orders or other trading interest" should be read as "subscriber orders or subscriber trading interest." The alternative reading would potentially capture all (other) trading interest sent to the broker-dealer operator of the NMS Stock ATS. Finally, UBS would appreciate confirmation that, for those ATS subscribers that also maintain a commercial relationship with the broker-dealer operator for other purposes (e.g., to use the broker-dealer's high touch block trading desk or to use the broker-dealer's trading algorithms), the term "subscriber" applies solely to orders/trading interest routed to the NMS Stock ATS pursuant to a subscriber agreement.

Part III, Item 3: Products or Services Offered to Subscribers

UBS supports in principle the Proposal's requirement to disclose advanced or complex order handling features offered to subscribers. However, we suggest the disclosure be limited to functionality provided to subscribers as part of their direct relationship with an ATS (i.e., exclude non-ATS specific relationships maintained for other purposes). As noted earlier, a customer may interact with UBS in a number of different ways, including as: a UBS ATS subscriber, user of UBS trading algorithms, user of UBS high touch trading desk services, etc. Each relationship and experience is different and free-standing in certain respects. The Proposal, as currently drafted, would potentially require the disclosure of a whole array of products or services, the enumeration of which would add little value and be burdensome to maintain/update. In addition, a forced public listing of a broker-dealer's products and services may be inconsistent with the broker-dealer's traditional approach and preferences for marketing.

Part III, Item 4: Arrangements with Unaffiliated Trading Centers

As noted in our earlier comments discussing the scope of affiliate relationships, we believe the central concern around those relationships should be focused on whether an affiliated (or third-party) entity has differentiated or unique access to an ATS. To the extent that the third party entity solely has access to functionality disclosed elsewhere in the proposed Form ATS-N, we believe this question is unnecessary. Moreover, as a practical matter, it is unclear how a broker-dealer operator could reliably understand which entities would be deemed affiliates of unaffiliated entities, or whether they operated trading centers.



Part III, Item 5: Trading Activities on the NMS Stock ATS

UBS believes the disclosure required by Part III, Item 5 of the Proposal should be limited to the affiliate(s) or business unit(s) that *directly* enter orders or other trading interest into the NMS Stock ATS. Any affiliate or business unit that indirectly sends orders to an NMS Stock ATS through another entity or through services provided by another entity is not 'enter[ing]' orders "on the NMS Stock ATS." We believe this more tailored approach would still satisfy the Commission's goals of furthering disclosure regarding access methods.

With respect to "proprietary trading" (see Question 206 in the Proposal), UBS notes the challenges encountered by federal regulators in defining this term as part of the "Volcker Rule" under the Dodd-Frank Act. Rather than attempting to integrate a similar definition into ATS regulation, UBS suggests that the Commission's goals would be served more simply by requiring ATSs to categorize and disclose to their subscribers the nature of a counterparty (i.e., agent, principal (including affiliates of the broker-dealer operator)). This type of disclosure would succinctly inform a subscriber what type of counterparty was on the other side of a trade. Additionally, if a subscriber desires to "opt out" of trading with the broker-dealer operator's principal orders, the operator should be obliged to follow and implement the stated instruction.

Part III, Item 7: Shared Employees of the NMS Stock ATS; and Part III, Item 10: Confidential Treatment of Trading Information

In line with Regulation SCI practice, we support disclosure to the Commission of relevant information concerning individuals responsible for ATS functions. In relation to disclosure concerning "shared employees" that support an NMS Stock ATS, we would urge the Commission to limit the scope to "categories of service" as opposed to individual positions and titles. We believe this disclosure will primarily capture: (i) operations support, such as those individuals who assist in clearing and settling trades; (ii) regulatory functions, such as compliance monitoring and reporting personnel, and (iii) technology roles, such as systems administrators. We believe the Commission should only require individual-specific disclosures for those employees who are not solely involved in these three categories of service/support roles.

Part III, Item 8: Service Providers to the NMS Stock ATS

Part III, Section 8 of the Proposal would require information regarding any person(s) other than the broker-dealer operator that may provide an operation, service or function to the NMS Stock ATS. The scope of the Commission's intentions is not clear given its use of the broad term "operation, service or function." For example, would this disclosure extend so far as to capture third party vendors such as the power company? UBS believes the Commission should refine the scope of "Service Provider" so it better aligns with similar provisions in Regulation SCI that are used to define SCI Systems.²

As currently drafted, the Proposal would require broker-dealer operators to provide roles and titles for each of the individuals and/or employers that support the ATS. This information is likely to become stale

² Regulation SCI FAQ 2.05: Are the systems of utilities (e.g., power companies) that provide services necessary for the performance of the core functions covered by Regulation SCI considered to be SCI systems of the SCI entities that rely upon them? See: <https://www.sec.gov/divisions/marketreg/regulation-sci-faq.shtml>



and outdated as individuals leave or change roles. Furthermore, while a change among vendor employees ordinarily would not be considered a "material event" it nonetheless appears that a broker-dealer operator would be required to disclose this information under this Proposal.

Separately, UBS questions the feasibility of providing "a detailed description of information technology services, including both hardware and software." Taken to an extreme, this statement could require an ATS operator to disassemble a server to enumerate the manufacturer of various components. We think a general but thorough description of the information technology services would be more practical.

Part IV, Item 1: Subscribers

a. Terms and Conditions of Use

UBS believes that most ATSs have an existing policy of requiring a written contract with subscribers. These contracts generally set out the terms and conditions governing the subscriber relationship and provide the broker-dealer operator with important protections (e.g., limitation of liability, indemnity, and termination provisions). Contractual agreements between an ATS broker-dealer operator and its clients are normally considered non-public and are routinely safeguarded as such. Therefore, we believe the information provided to the Commission under this section of the Proposal should not be made publicly available. As an alternative, we suggest highlighting in public disclosure the differences in subscriber access that may impact other users of the ATS.

b. Limitations and Denial of Service

UBS currently discloses its general requirements for becoming a user of the UBS ATS. Providing additional details on why an ATS would limit or deny ATS services might potentially impact an NMS Stock ATS's ability to reasonably control the activities and quality of flow on its platform. Therefore, we suggest the Commission collect this information for its use only.

Part IV, Item 5: Segmentation of Order Flow and Notice About Segmentation

UBS is supportive of NMS Stock ATSs disclosing whether they segment categories of available trading interest. We have taken steps to include such information in our publicly available Form ATS and ATS FAQs. However, in its Proposal the Commission indicates that operators should publish both the categories *and* the criteria for determining such groups. (*"Part IV, Item 5(a) would also require the NMS Stock ATS to describe the segmented categories, the criteria used to segment these categories, and procedures for determining, evaluating, and changing segmented categories"*). We respectfully disagree. By publishing the precise metrics and criteria associated with each segment, a subscriber could potentially alter its behavior to manage the categorization of its flow in an undesirable manner. This could lead to flow metrics (such as short-term price reversion) moving from a point where they are safely inside a particular boundary (which may be a function of the unknown value of the boundary) to being only marginally within the boundary. In our view, disclosure of too much detail in respect of the segmentation methodology could perversely reduce the effectiveness of segmentation as a control. We consequently believe the public disclosure of this information would be detrimental to NMS Stock ATSs and the execution quality they offer. If the Commission continues to believe this information is necessary, access to the information should be restricted to the Commission.



Part IV, Item 6: Display of Order and Trading Interest

Part IV, Item 6 of the Proposal would cover "order information or other trading interest" rather than "subscriber order information or other trading interest." If this formulation were literally applied as drafted, it would entangle the ordinary situation where a multi-service broker-dealer (i.e., a broker-dealer that operates an ATS and also executes client orders in the general marketplace) uses a tool to manage client orders across multiple trading venues. Such a tool would typically display to the responsible sales person the location of child orders among exchanges, ATSs (including the broker-dealer's own NMS Stock ATS) and other market centers. This information, which pertains to general execution services provided by the broker dealer, is not directly related to operation of the ATS. We do not believe this display of information is of the type targeted by the Commission, and we would suggest that appropriate changes be made to better limit the scope.

Part IV, Item 8: Suspension of Trading, System Disruption or Malfunction

UBS requests that the Commission consider harmonizing any definitions used in Part IV, Item 8 of the Proposal with those found in Regulation SCI.

Part IV, Item 12: Fees

Subscribers individually negotiate and agree upon fee rates with each ATS operator. As with any commercial relationship voluntarily established between sophisticated institutions, a number of factors are typically taken into consideration when setting fees, including the depth and breadth of a client relationship. The public disclosure of pricing ranges has the potential to be misleading because all relationships, trading services, and agreements are not equal or necessarily fungible. We urge the Commission to exercise restraint in this complex area and leave to vigorous market competition the setting of appropriate fees.

Importantly, UBS believes that conflicts of interest connected to order routing practices (for example, the payment and receipt of rebates) is a topic worthy of further exploration as part of a broader Commission initiative. As a practical matter, UBS believes that clients are highly interested in understanding whether an ATS offers rebates to subscribers. For the record, the UBS ATS does not offer rebates for any order types or flows, and we would support the inclusion of this question in the final Form ATS-N.

Part IV, Item 14: Order Display and Execution Access

UBS does not believe it is appropriate to include actionable indications of interest in the definitions of "bid" and "offer" under Regulation NMS.

Part IV, Item 16: Market Quality Statistics Published or Provided by the NMS Stock ATS to Subscribers

We refer to our response above in respect of information made available to subscribers, and we reiterate our position that publication of disclosure on a public website is more practical and efficient.

Conclusion

UBS supports the Commission's well-intentioned goal of increasing transparency around ATS operations and activities. ATSs play a vital role in our modern equity market structure and provide a sizable and important alternative source of liquidity for market participants. For the Commission's initiative to



succeed, we believe it is critical that market participants receive easy access to useful information that enhances their ability to make well informed routing decisions.

In general, the Proposal would further the Commission's primary goal and increase the level and quality of ATS-related information in the public domain. Nevertheless, as we noted in our comments above, there are certain areas where the Proposal appears to be overly broad as it would potentially require market participants to comb through extensive, frequently-changing disclosure that contained pockets of information that were of questionable value and relevance. Subscribers, market participants and regulators alike would benefit most from generally uniform disclosure that facilitates a ready analysis and fundamental understanding of NMS Stock ATs. To guard against an undesirable information overload, we believe the guidepost for newly mandated disclosure should be information that is directly pertinent to the ATS and its operator and any persons that have direct dealings with the ATS. Moreover, for the transparency to be fully harnessed and utilized in an effective manner, the Commission should endeavor to require disclosure that is generally consistent and uniform. Any exercise to compare NMS Stocks ATs and their practices would be more difficult and time-consuming if the predicate information appears in varied and disparate formulations.

As the Commission carefully considers the public comment letters regarding the Proposal and makes progress toward final rulemaking, we would encourage the Commission to work closely with market participants to determine the appropriate level and balance of information required on Form ATS-N. UBS stands ready to help; we are always willing to share our unique perspective and expertise in this area.

Thank you for the opportunity to provide comments on the Proposal. Should you have questions regarding the views of UBS, please do not hesitate to contact me at [REDACTED].

Sincerely,

A handwritten signature in black ink that reads "Mark Holder". The signature is written in a cursive style and is positioned above a solid black horizontal line.

Mark Holder

Managing Director
UBS Securities LLC

cc: Honorable Mary Jo White, Chair
Honorable Michael S. Piwowar, Commissioner
Honorable Kara M. Stein, Commissioner
Stephen Luparello, 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