



asset management group

April 18, 2022

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: *Notice of Proposed Rulemaking on amendments to Exchange Act Rule 3b-16 regarding the definition of “Exchange”; Regulation ATS for ATSS That Trade U.S. Government Securities, NMS Stocks, and Other Securities; Regulation SCI for ATSS That Trade U.S. Treasury Securities and Agency Securities (the “Proposal”)¹ (File No. S7-02-22)*

Dear Ms. Countryman:

The Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”)² appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “**Commission**” or “**SEC**”) on the above-referenced Proposal to:

- make changes to Rule 3b-16 under the Exchange Act that would materially expand the scope of the definition of “exchange.” Most notably, the Commission has proposed to require “communication protocol systems”—a term the Commission does not define—to either register as exchanges or operate as alternative trading systems (“**ATSS**”);
- propose changes to the fair access requirements in Rule 301(b)(5) of Regulation ATS (“**Fair Access Rule**”) that would require an ATS to ensure that it has reasonable written standards for granting, limiting, and denying access to the ATS’s services; and
- amend Regulation ATS under the Securities Exchange Act of 1934 (“**Exchange Act**”) for ATSS that trade government securities as defined under 3(a)(42) of the Exchange Act or repurchase and reverse repurchase agreements on government securities (“**Government Securities ATSS**”).

The Proposal makes a number of changes to an existing regulation that has functioned very well. In our view, the broad drafting of the Proposal suggests a dramatic expansion of regulatory scope and obligations – in ways unrelated to a data-driven identification of problems requiring attention. And it is the risk of such an expansion of scope and obligations that presents the most troubling consequences. The wording of the Proposal, perhaps intended to capture a limited number of alternative trading systems, risks

¹ SEC Exchange Act Release No. 94062 (Jan. 26, 2022). The Proposal includes reproposals of certain amendments included in the Commission’s 2020 proposed amendments to Regulation ATS. See Exchange Act Release No. 90019 (Sept. 28, 2020), 85 Fed. Reg. 87106 (Dec. 31, 2020) (“2020 Proposal”).

² SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

being interpreted to extend to a host of systems either developed by vendors or in-house to facilitate efficiencies and cost savings but present no market trading capabilities.

While SIFMA AMG supports foundational investor protections applied to the basic rules of operation of ATSS, in evaluating the components of the Proposal, we apply the following criteria:

- has a data-driven analysis identified a problem for consideration;
- is the problem of significant magnitude to warrant regulatory action; and
- does the proposed regulatory remedy mitigate the problem in a cost-effective, efficient manner while avoiding countervailing adverse consequences and/or having a chilling effect on innovation otherwise bringing efficient cost savings to investors?

Our comments will address a number of the components of the Proposal from this perspective with a particular focus on issues germane to the buy-side. In addition, we note that we have reviewed and agree with the views of SIFMA as expressed in its comment letter dated April 18, 2022. Our main areas of focus are the following:

1. **Expanded Definition of “Exchange”**: The proposed expansion to include “communication protocol systems” is inadequately defined and tailored and presents the real risk that innovative, cost-effective, and efficient communication, management, and other systems could be subject to the regulations.
2. **Fair Access Requirements**: Fair access should not apply to limit discretionary services provided by an ATS apart from access, including client tiering, order segmentation, user ratings, and so on. Aggregation of trading volumes across a common or affiliated broker-dealer will not enhance “fair access” but will instead negatively impact liquidity when trading is forced to stop across otherwise distinct trading venues.
3. **Amendments to Form ATS-N**: While certain proposed amendments relating to NMS Stock ATSS may be helpful, other changes related to the expansion of the “exchange” definition are inappropriate.
4. **Government Security ATSS**: A data-driven analysis should be performed to demonstrate the need for reform and that the proposed reform avoids material unintended consequences.

I. Introduction

SIFMA AMG generally supports rules which seek to increase transparency, promote market integrity, reduce misconduct, and/or provide regulatory protections, however it is important that such rules are designed to achieve those goals while minimizing material adverse effects on pricing, liquidity and hedging risks. We believe that several aspects of the Proposal, regardless of the intention, may have a result that inappropriately reduces liquidity, raises pricing, increases costs, and/or compromises efficiencies.

We are concerned that the Commission’s appropriate focus with respect to investor protection in the context of the use of ATSS could be interpreted to have expanded to include both systems used to facilitate streamlined communication and operational efficiencies, and products where the risk of material consequences is low. Little to no data is included in the Proposal to demonstrate the need for new or

amended regulation, so one is left to conclude the Proposal reflects more of a preferred direction of regulation, and it is our aim to recommend changes to better tailor the drafting to better address the Commission's aims while avoiding significant adverse consequences.

Of greatest concern is the potential extension of ATS treatment to single user systems not involving communications between buyers and sellers; management systems developed either in-house or by third parties on which buyers and sellers do not interact for price discovery and trades are not executed; and even potentially ETF create and redeem protocols. Such systems have been developed to streamline workflows and facilitate operational efficiencies for the benefit of the overall market as well as for individual investors. In addition, the extension of ATS treatment to systems used to trade government securities, and repurchase or reverse repurchase agreements on government securities, is also problematic as the Commission has provided no indication of problems with such systems for which we believe present there is little risk of material consequences due to the nature of the product.

We are gratified by the clarification in footnote 72 which provides as follows:

“The Commission is not proposing to amend Exchange Act Rule 3b-16(b), which excludes from the definition of “exchange” systems that perform only traditional broker-dealer activities, including: systems that route orders to a national securities exchange, a market operated by a national securities association, a broker-dealer for execution, or systems that allow persons to enter orders for execution against the bids and offers of a single dealer if certain additional conditions are met. These systems would continue to not fall within the definition of “exchange.” . . . Further, as explained below, the Commission is not proposing to include within the definition of “exchange” a system that unilaterally displays trading interest without offering a trading facility or communication protocols to bring together buyers and sellers. Also, systems that provide general connectivity for persons to communicate without protocols, such as utilities or electronic web chat providers, would not fall within the definition of exchange.”

Given what we perceive as potential ambiguities in the proposed definition, we believe it will be imperative for the Commission to explicitly exclude such systems, as well as others which share their attributes, from treatment as an ATS as either an “exchange” or as a “communication protocol system.”

In that regard, it may be helpful to provide a detailed explanation of order and execution management systems (“OMS” and “EMS”); as well as how such systems can be configured to accept and display broker indications of interest (“IOIs”) and then to identify key attributes for use in clarifying exceptions from treatment as an ATS. Note that over time, as some OMSs have incorporated EMS capabilities (and vice-versa) these systems have come to be referred to as “OEMSs”.

Asset managers manage money on behalf of their clients. Throughout a given day, portfolio managers at the asset manager make decisions to buy or sell assets on behalf of their clients' portfolios. These decisions are entered into the asset manager's systems as an instruction from a portfolio manager to the asset manager's trading desk to buy or sell a specific amount of a specific asset for one or more client portfolios; such instructions are referred to as orders. Asset managers may manage money for hundreds, if not thousands, of clients, and there may be many portfolio managers raising orders throughout a day. As a result, asset managers use systems to help trading desks manage all of these orders; such systems are known as OMSs. An OMS, either developed internally or by a third party, helps traders to organize their orders, allocate trading executions, manage compliance restrictions, and communicate with downstream processes.

For example, if multiple orders get raised to buy the same stock across multiple client portfolios, an OMS allows the trading desk to “merge” those orders into one consolidated order, so that a trader can interact more efficiently with the marketplace.

Once a trader has finished managing the orders, and has them ready to go to market, the trader’s job now shifts to finding the best way to trade. This step in the process is where an internal or third-party EMS is used, because these systems specialize in providing traders with information and tools they need to trade the order in the most optimal way. This includes allowing an asset manager to configure the EMS to show IOIs sent to such asset manager, displaying at what price the asset is currently (and was historically) trading using market data feeds from trading venues, and, most importantly, giving the trader connectivity to route an order to the liquidity provider of their choice and receive executions back. An EMS or OEMS allows users to elect to route orders to another EMS or to a trading venue such as an exchange, ATS, OTC market maker, or dealer-operated platform or system, where the user’s order would then be managed on such EMS or pursuant to the rules of such trading venue.

One functionality an OEMS can provide is to consume and display IOIs from a specific broker to a specific asset manager user of the OEMS. The process starts with an asset manager establishing a commercial relationship with a broker with whom it wants to trade. The asset manager and the broker may agree that the broker will provide IOIs. The asset manager can then elect to instruct its OEMS provider to configure the asset manager’s instance of the OEMS system to accept IOIs from the approved broker(s). Each approved broker generates its own IOIs for the asset manager and delivers them (often via FIX messages or an API) to the OEMS. IOIs from approved brokers are organized and displayed to traders at the specific asset manager via the OEMS. While the OEMS service may be used by multiple asset managers, each asset manager has its own list of approved brokers on the OEMS, and the IOIs each asset manager receives on the OEMS are unique to that asset manager. Asset manager A and B may receive different IOIs from the same approved broker, and the IOIs each asset manager receives through the OEMS are not viewable/accessible by other asset managers using the same OEMS.

OEMS may also allow an asset manager to route an order to an approved broker on the basis of the approved broker’s IOI (e.g., the trader would click on a button to generate an order message that the OEMS sends to the approved broker). An OEMS doesn’t allow orders from two or more asset managers to interact on the OEMS. The asset manager’s order message is conveyed by the OEMS to the approved broker’s proprietary system, and if the order is accepted by the broker pursuant to the protocols of the broker’s proprietary system, the order is executed and a message is sent from the broker’s system to the OEMS for the asset manager indicating the order has been executed along with the relevant trade details.

Key components of each of an OMS, EMS, and OEMS (collectively “OEMSs”) include:

- a. they are used to organize orders involving a single user (e.g., an asset manager), and orders involving separate users of the OEMS do not interact,
- b. they can be used to display IOIs sent to a single user by one or more broker(s), each approved by the single user, and IOIs sent to multiple users by a broker only appear individually to each user, and
- c. they allow the user to route orders to another EMS or to a trading venue such as an exchange, ATS, OTC market maker, or dealer-operated platform or system, where the user’s order would

then be managed on such EMS or pursuant to the rules of such trading venue. This includes the OEMS being able to send order messages from a single user to an approved broker directly to the broker's proprietary system, allowing the broker to process the order and respond back to the single user via the OEMS. In all such use cases the communications are bilateral (i.e., between the user on the one hand, and the EMS or trading venue on the other) and the OEMS does not impose structured communication protocols on users or other EMSs/trading venues that establish conditions for communications, such as minimum content for messages, prescribed time periods for responding, limits on the number of messages that can be sent, or the types of securities about which a user can communicate; any such rules would be established by the trading venue.

SIFMA AMG recommends these key components be used to distinguish systems which are not to be treated as an ATS.

II. Expanded Definition of "Exchange"

SIFMA AMG supports the Commission's intention to expand the range of systems requiring treatment as an "exchange" or ATS so that market participants using systems for price discovery through market interaction can avail themselves of the same investor protections, fair and orderly market principles, and SEC oversight that apply to registered exchanges and ATSs. And, generally, we also recognize that certain systems where multiple buyers and sellers have access to interact on bids and offers, strict communication protocols exist, and orders may be executed may qualify for ATS treatment. However, SIFMA AMG firmly believes that absent a considerable narrowing of the drafting as to the proposed scope, and/or the identification of needed exemptions, the Proposal could risk negatively impacting systems beyond the intended targets and in potentially capturing OEMS systems, could have a stifling effect on a range of innovative systems designed to reduce costs and increase efficiencies and thereby enhance overall market liquidity.

The source of our concern relates to the Proposal's approach in expanding the interpretation of the "exchange" definition in Rule 3b-16 in the following manner:

- **Replaces "Orders" with "Trading Interest"**: all references to "orders" throughout Rule 3b-16 would be changed to "trading interest," defined as an "order" or "any non-firm indication of a willingness to buy or sell a security that identifies at least the security and either quantity, direction (buy or sell), or price.";
- **Focuses on Bringing Together Securities Buyers and Sellers Rather Than Bringing Together Securities "Orders" of Multiple Buyers and Sellers**: the first prong of Rule 3b-16 would be revised to refer to a system that brings together "buyers and sellers of securities" rather than a system that brings together the "orders for securities of multiple of buyers and sellers."; and
- **Expands the Interpretation of an "Exchange" to Include "Communication Protocols"**: the "exchange" definition which presently requires that the person or group "uses established, non-discretionary methods (whether by providing a trading facility or by setting rules)" under which securities orders interact, to be revised to include "communication protocols" described as including, among others, RFQ systems electronically displaying firm or non-firm trading interest (e.g., stream

axes), conditional order systems, and negotiation systems that allow users to select certain preapproved participants and then exchange messages for purposes of agreeing to the terms of a trade.

SIFMA AMG believes that in expanding the definition of “exchange” and adding the term “communication protocols” in the Proposal, the Commission’s drafting risks moving too far beyond trading venues and is potentially capturing a broad range of OEMS, ETF portal, and single user systems carefully developed by a diverse group of market participants to introduce efficiencies and cost savings into the market – **but which do not allow for separate users to interact and do not directly connect with multiple brokers to confirm the non-discretionary execution of orders.**

Leveraging technologies and capabilities unimagined even a few years ago, market participants and vendors have developed systems internally or in the market to move beyond older modes of communication and order management to most efficiently engage with the market and process orders that otherwise take place on an exchange or an ATS. We are concerned the OMS, EMS, OEMS, and ETF portal systems could be captured by the broadest – and inappropriate – interpretation of the proposed language and thereby be required to be transferred to a bank or broker-dealer to facilitate registration, compliance, public reporting, and fair access requirements – with the attendant delays and costs. And the risk of such an outcome could serve to chill the innovation which has facilitated both enhanced market liquidity and reduced investor costs.

As the systems that could be inappropriately viewed to be covered by the proposed definition of “exchange” do not perform functions traditionally associated with exchange activity such as the interaction of bids and offers and the matching or crossing of orders, such systems do not present the level of operational risk or investor protection concerns requiring the same degree of regulatory oversight applied to the existing 24 national securities exchanges, 50 regulated equity trading venues, and 34 ATSs.

SIFMA AMG is very concerned that the addition of the undefined term “communication protocol systems” will inevitably lead to confusion for the Commission and Staff as well as for all market participants as to what is in and out of scope. The vague expansiveness of the listed examples is particularly worrisome given that Rule 3b-16(b) already provides that a system is not considered an “exchange” solely because it routes orders for execution to exchanges or to broker-dealers or because it permits persons to enter orders for execution against bids and offers of a single broker-dealer.

Should the Commission determine to move forward with the proposed amendments and include communication protocol systems within Rule 3b-16, it is imperative that the Commission provides a very clear definition that makes it completely transparent which systems the Commission considers to be within the scope of the term “exchange” and which systems are not within the scope.

Components of internal or third-party systems to be excluded from ATS treatment are as follows:

- a. they are used to organize orders involving a single user (e.g., an asset manager), and orders involving separate users of the OEMS do not interact,
- b. they can be used to display IOIs sent to a single user by one or more broker(s), each approved by the single user, and IOIs sent to multiple users by a broker only appear individually to each user, and

- c. they allow the user to route orders to another EMS or to a trading venue such as an exchange, ATS, OTC market maker, or dealer-operated platform or system, where the user's order would then be managed on such EMS or pursuant to the rules of such trading venue. This includes the OEMS being able to send order messages from a single user to an approved broker directly to the broker's proprietary system, allowing the broker to process the order and respond back to the single user via the OEMS. In all such use cases the communications are bilateral (i.e., between the user on the one hand, and the EMS or trading venue on the other) and the OEMS does not impose structured communication protocols on users or other EMSs/trading venues that establish conditions for communications, such as minimum content for messages, prescribed time periods for responding, limits on the number of messages that can be sent, or the types of securities about which a user can communicate; any such rules would be established by the trading venue.

Such systems lack direct connection to exchanges for buyers' and sellers' interaction with bids and offers; and lack mandated, bilateral protocols for all buyers and sellers as to hours of operation, order or response timing requirements, error or trade dispute resolutions mechanisms, or similar rules customary for "exchanges." Such systems have presented no evidence of issues raising investor protection concerns but add significant efficiencies and cost savings in the management of customer assets.

Examples of systems which do not present concerns and therefore should be excluded from ATS treatment include:

- **Single User Systems.** Where a single party (buyer or seller) operates a system that buys and sells securities through the system, and the parties who enter individual orders only interact with, and execute against, the single party, such systems should be confirmed to be outside of the Proposal. For example, systems designed for the purpose of executing orders against a single party, such as a dealer operated system or asset manager operated system, would not be considered to have multiple parties (e.g., buyers and sellers) interacting for price discovery and should not qualify as an "exchange" for treatment as an ATS. In each case, although the single party may use the system to communicate with multiple parties, each communication is on a bilateral basis without the ability of the dealer or asset manager to see what is happening with any other dealer or asset manager. And just as systems used by a single dealer to communicate individually with clients should be excluded, so too should systems used by a single asset manager to communicate individually with dealers. And to be clear, single asset manager systems to be excluded will include communications on behalf of all clients and/or collective investment vehicles managed by such asset manager and its consolidated affiliates, as the asset manager and its affiliates engage to trade on behalf of each such client and/or collective investment vehicle. In addition, the Commission should clarify that the single user exemption should apply whether the single user accesses third party or proprietary technology – provided each user has its own private platform or instance of the OEMS, configured according to its needs. That many users may be simultaneously but independently using the same system software – as their own private instance – should make no difference in application of the single user exemption.
- **OEMS Systems.** As noted above, we are concerned that the Proposal's description of "communication protocol systems" could be inappropriately interpreted to cover these systems. However, we believe it is important for the Commission to specifically exclude such systems as they are used to organize orders involving a single user (e.g., a dealer or an asset manager). Orders involving separate users do not interact and the system is used to accept messages sent to a single user by a dealer approved by the

single user. Messages sent to multiple users by a dealer only appear individually to each single user, and messages to multiple users do not interact. Order messages from a single user are conveyed by the system to the single user's approved dealer's proprietary system, which then conveys acceptance from the approved dealer's proprietary system to the single user via the system. Accepted orders do not interact with separate users, nor do they interact directly with the approved dealer – but rather from the system to the approved dealer's proprietary system. While such systems facilitate communications from clients to broker-dealers, they are not “platforms” on which multiple buyers and multiple sellers interact with each other for price discovery or otherwise. The Commission should clarify that neither “exchanges” nor communication protocols include such systems which facilitate communications from a client to a broker-dealer platform, where each broker-dealer platform consumes the messages in its own system for any purpose. Absent extraordinary facts, neither an “exchange” nor a communication protocol should be inferred from the interactions of separate systems in the absence of a unified single system for buyers and sellers to interact with bids and offers. A communication protocol should not be inferred unless the system imposes rules on both parties such as hours of operation, order or response timing requirements, error or trade dispute resolutions mechanisms or similar rules customary for “exchanges.”

- **ETF Creation and Redemption Portals.** Some ETF sponsors operate web-based portals through which Authorized Participants (“APs”) may communicate creation and redemption requests for ETFs. The portals offer a convenient and efficient means for such requests to be communicated by APs to sponsors. Sponsors may post information and incorporate tools on such portals which help APs to design acceptable baskets for fixed income ETF creation requests. For example, in connection with fixed income ETFs where it is not possible or practical for an AP to deliver a pro-rata portion of each bond in the ETF, the ETF sponsor may publish a target list of bonds on the portal to indicate the subset of bonds it would likely accept for a creation request. A sponsor's portal would typically cover all ETFs offered by the ETF sponsor and only registered broker-dealers who have signed up as an AP for a particular ETF would be allowed to initiate a create or redeem request for that ETF. Entities that are not registered broker-dealers would not have access to the portal. We do not believe the Commission intended to capture such portals as exchanges, but given the breadth of the current definition, it is possible these portals could be classified as exchanges. We don't believe there would any public benefit to treating such portals as exchanges and requiring registration as an ATS. The only entities permitted on the portal (other than the ETF issuers) would be registered broker-dealers. We do not see any public policy, consumer protection or level playing field benefit to having the portal operator register as a broker-dealer under these circumstances. ATS recordkeeping and Form ATS-R reporting requirements would be duplicative and an incremental unnecessary burden as creation and redemption activity by an ETF is already publicly available. While such portals may qualify for the new proposed exemption for an issuer to sell its own securities to investors under 3b-16(b)(3), it is not clear on its face that this exemption would cover a portal on which multiple issuers offer securities. Where the issuers are all investment funds offered by the same sponsoring entity (including affiliates), we believe there would be no public policy reason for the exemption not to apply. If each ETF could establish its own portal and avail itself of the exemption, it seems odd that a sponsor would not be allowed to create a single portal for all such ETFs. However, as these portals allow both creation and redemption requests, the 3b-16(b)(3) exemption may not be available in connection with the portal's redemption (repurchase) activity. One way in which this issue could be addressed would be to expand the scope of the exemption in 3b-16(b)(3) to cover an issuer transacting in its own securities. Alternatively, the Commission could clarify that a portal which allows APs to initiate and consummate creation and redemption requests for ETFs would not fall within the exchange definition.

In sum, SIFMA AMG is concerned that the Commission's proposed amendments to Rule 3b-16 to include undefined communication protocol systems, to change "order" to "trading interest", and to delete the qualifier "multiple" from the reference to buyers and sellers as the result will, at a minimum, lead to confusion as to the effect for market participants, as well as for the Commission and the Staff. And we fear there is serious risk that well-crafted, widely used, and highly value-add management and communication systems could be negatively impacted. If the Commission decides to move forward with these changes, we urge the adoption of exemptions and/or clarifications that will serve to clearly exclude systems noted above.

III. Fair Access Requirements

The Commission proposes to establish minimum requirements for the written standards required for ATSS and to require firms to aggregate the transaction volume for a security or security category of ATSS that are operated by a common broker-dealer or operated by affiliated broker-dealers for purposes of calculating the volume thresholds of Rule 301(b)(5)(i). The proposed written standards include the identification of any differences in access by an applicant and current participants and the justification as to why each standard, including any differences in access, is fair and not unreasonably discriminatory.

SIFMA AMG members appreciate the intention of these proposed changes, including the written standards for any differences in access provided to clients. And yet again, it is unclear to us there is evidence of a problem being targeted and analysis that the proposed solution is narrowly tailored to mitigate the risk without raising unacceptable adverse consequences. Our experience, as users of ATSS, is that fair access is provided and that discretionary service levels are appropriately tailored to objective client characteristics. For this reason, we ask that the Commission step away from any such proposals that are meant to enhance the clarity of ATS access standards as to do so will likely lead to added costs and, potentially, could sacrifice appropriately differentiated service levels.

If the Commission elects to move forward with aspects of the Proposal, we recommend its clarification by noting that while access must be fair, individualized treatment of each client's needs and preferences must be allowed. Access need not look the same across all clients for it to be fair and reasonable. At present, once access is granted, it is not uncommon, based on the client characteristics, for services offered by the ATS to be tailored, including client tiering, order segregation, and user ratings, to different clients based on size, usage, and preferences.

Such tailored services are the hallmark of a healthy ecosystem. We are concerned that the emphasis on standard treatment could be interpreted so as to require such different service approaches and levels to be scaled back or discontinued altogether as to maintain them for all clients could be cost prohibitive. We believe the unintended negative consequence of the proposed changes could be clients being denied access as their business fails to justify the cost of a standard service, or a scaling back of overall service levels to that appropriate for the smallest, least active, lowest rated clients.

In addition to concerns about the requirement for reasonable access standards, SIFMA AMG disagrees with the Commission's proposal to broaden the application of the Fair Access Rule by aggregating the average transaction volumes of all ATSS operated by a common broker-dealer or by affiliated broker-dealers. Experience has demonstrated the impact of low thresholds for regulations, as a number of NMS Stock ATSS stop trading in symbols when trading volume approaches certain regulatory thresholds, including the volume thresholds that trigger fair access requirements and Regulation SCI. SIFMA AMG

believes that aggregating volume across multiple ATSS will not result in more ATSS being subject to the fair access requirements in Rule 301. Rather, aggregating volume among multiple ATSS will reduce liquidity by leading to fewer available venues as ATS operators cease trading symbols when the volume thresholds are approached, and these thresholds will be reached more quickly if multiples ATS volumes are aggregated.

Thus, contrary to the stated goal of fair access to provide more ready access by market participants to key trading venues, SIFMA AMG believes the proposal to aggregate volume across multiple ATSS will risk a reduction in liquidity and access for some or all market participants.

IV. Proposed Amendments to Form ATS-N

The Commission proposes a wide range of amendments to the disclosure requirements in Form ATS-N. As SIFMA AMG opposes the incorporation of communication protocol systems into Rule 3b-16, SIFMA AMG does not support the proposed amendments to Form ATS-N reflecting that change. In addition, should the Commission elect to move forward with rules for Government Securities ATSS, SIFMA AMG supports the development of a separate Form ATS-G rather than a combined form so that those filing Form ATS-N benefit from the greatest continuity in their completion of that form without having the need to add requirements relating to government securities.

V. Government Securities ATSS

While SIFMA AMG may generally understand the intention of the Commission's proposals to eliminate the exemption and require alternative trading systems that trade government securities or repurchase and reverse repurchase agreements on government securities to register with the Commission as ATSS, we need to highlight the absence of a data-driven analysis in identifying a problem, as well as a comprehensive impact analysis to demonstrate the mitigation of unintended countervailing consequences of the Proposal.

Absent data to the contrary, we agree with the Commission's statement in adopting Reg ATS in 1998 to exclude systems exclusively supporting trading in government securities because "government securities are subject to other forms of regulation that help to ensure that those markets are fair and orderly."³ And notwithstanding market conditions in March and April 2020, we have not seen evidence that the use of alternative trading systems for government securities exacerbated the crisis that developed largely as a result of liquidity needs related to high-quality assets. And we have concerns that the registration, compliance, public reporting, and fair access requirements raised by the Proposal could have unintended negative consequences including declines in liquidity, increases in price, and added costs for a market in low-risk products that benefits significantly from the use of such systems.

In the event the Commission moves forward with the Proposal with respect to government securities, we oppose aggregating volumes across multiple ATSS to determine whether volume thresholds have been met. SIFMA AMG also believes that any regulatory disclosure scheme for Government Securities ATSS should be established and developed separately from the existing obligations established

³ Securities Exchange Act Release No. 40760, 63 FR 70844, 70859 (Dec. 22, 1998) (Regulation ATS Adopting Release).

for NMS Stock ATs so that the relevant forms may be appropriately tailored for the specific products, while retaining the existing framework for Form ATS-N well-known by the industry.

VI. Conclusion

SIFMA AMG appreciates the Commission's intent to support the well-functioning of our markets, but absent the clear identification of a problem not already well-addressed by existing regulations, we have serious questions and concerns about the potential for an expansive interpretation as to the scope of these changes. Our members, each representing retail investors, highly value the single user platforms - as well as the OEMS systems which do not allow the interaction of buyers and sellers for price discovery or otherwise. We are concerned that the current drafting could sacrifice value-adding management systems which present no identified risk, and thereby sacrifice the efficiencies and cost savings presently enjoyed by investors as a result of the use of such systems.

The Proposal of 654 pages has been published at a time when a number of other reporting and disclosure reforms have been proposed by the Commission, including new rules related to the reporting of security-based swaps, significant revisions to the Commission's Section 13 reporting rules and their application to derivatives, new proposals to enhance short sale disclosures and new requirements with respect to reporting of securities lending transactions. The operational burden and the commercial impact of all these new and additional requirements on market participants will in the aggregate be quite significant, thereby demanding adequate time for thoughtful analysis and comment and, ultimately, implementation.

In addition, the Commission has presented 224 questions for response concerning the operation of the Proposal, and SIFMA AMG feels strongly that a 30-day comment period is simply an insufficient amount of time to allow for meaningful consideration of, and comment on, the Proposal, which would impose significant changes to current market practices.⁴ We are especially concerned by the Commission's repeated request for data demonstrating the effect of the implementation of the Proposal as this underlines that the Commission has not done its own required data analysis, and it would be difficult for the market to present data on the Proposal – key components of which lack critical definitions.

In this regard, SIFMA AMG reconfirms our request that the comment period should have been extended to 90 days. In particular, we note that the range of activities and operational ramifications implicated by the Proposal would usually warrant a 90-day comment period, or even the usual default period

⁴ See Letter to Honorable Gary Gensler, Chair, Securities and Exchange Commission, from Alternative Credit Council (ACC); Alternative Investment Management Association (AIMA); American Bankers Association (ABA); American Council of Life Insurers (ACLI); American Investment Council (AIC); Bank Policy Institute (BPI); Bond Dealers of America (BDA); FIA Principal Traders Group (FIA PTG); Financial Services Forum (FSF); Institute of International Bankers (IIB); Institute for Portfolio Alternatives (IPA); Investment Adviser Association (IAA); Investment Company Institute (ICI); Loan Syndications and Trading Association (LSTA); Managed Funds Association (MFA); National Association of Corporate Treasurers (NACT); National Association of Investment Companies (NAIC); National Venture Capital Association (NVCA); Real Estate Roundtable (RER); Risk Management Association (RMA); Securities Industry and Financial Markets Association (SIFMA); Securities Industry and Financial Markets Association Asset Management Group (SIFMA AMG); Security Traders Association (STA); Small Business Investor Alliance (SBIA); and U.S. Chamber of Commerce (the Chamber) Center for Capital Markets (CCMC) (collectively, the Associations) regarding the need for sufficient comment periods, cost benefit analysis and meaningful public input in the regulatory rulemaking process, dated April 5, 2022. https://www.sifma.org/wp-content/uploads/2022/02/SEC_Joint-Trades_Comment-Period-Letter_4-5-2022.pdf

of 60 days. We are concerned that a 30-day comment period means that commenters are unable to deliberate on the issues carefully and provide the quality of responses and alternatives that would be valuable for the Commission's consideration as part of thoughtful rulemaking. Given that, the Commission should be open to providing further guidance or no action relief post adoption if issues are later raised that we were unable to identify during our abbreviated review of this proposal

On behalf of SIFMA AMG, we appreciate the opportunity to respond to the Proposed Rule and your consideration of our comments and recommendations. If you have any questions or require additional information, please do not hesitate to contact us by calling Lindsey Keljo at (202) 962-7312 or William Thum at (202) 962-7381.

Sincerely,



Lindsey Weber Keljo
Asset Management Group - Head



William C. Thum
Managing Director and Assistant General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Pierce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner