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August 17, 2018

The Honorable Mike Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Regulation of NMS Stock Alternative Trading Systems*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission) entitled "Regulation of NMS Stock Alternative Trading Systems" (RIN: 3235-AL66). We received the rule on July 24, 2018. It was published in the *Federal Register* as a final rule on August 7, 2018. 83 Fed. Reg. 38,768. The effective date of the final rule is October 9, 2018.

The final rule amends regulatory requirements in Regulation ATS applicable to alternative trading systems (ATS) that trade National Market System (NMS) stocks (hereinafter NMS Stock ATSs) including so called "dark pools." First, the rule adopts new Form ATS-N, which will require NMS Stock ATSs to disclose information about their manner of operations, the broker-dealer that operates the ATS (broker-dealer operator), and the ATS-related activities of the broker-dealer operator and its affiliates. Second, the rule requires public posting of certain Form ATS-N filings on the Commission's website, which will be accomplished through the Commission's Electronic Data Gathering, Analysis, and Retrieval system and require each NMS Stock ATS that has a website to post a direct URL hyperlink to the Commission's website. Third, the rule provides a process for the Commission to review Form ATS-N and, after notice and opportunity for hearing, declare an NMS Stock ATS-N ineffective. Fourth, the rule requires all ATSs subject to the regulations to place in writing its safeguards and procedures to protect subscribers' confidential trading information.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Brent J. Fields
Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
“REGULATION OF NMS STOCK ALTERNATIVE
TRADING SYSTEMS”
(RIN: 3235-AL66)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) estimated that the rule’s aggregate quantifiable costs to alternative trading systems (ATS) that trade National Market System (NMS) stocks (hereinafter NMS Stock ATSs) will be \$2,206,525.40 initially and \$427,774.20 on an annual ongoing basis. Additionally, the Commission estimated the aggregate, quantifiable costs to all ATSs associated with revisions to Rule 310(b)(10) and Rule 303 to be \$253,170 initially and \$82,476 annually. The Commission also stated NMS Stock ATSs face potential costs because disclosure of previous non-public information could lead market participants to direct order flow away from the ATS if the participant discovers their orders would have a greater likelihood of receiving lower execution quality on the NMS Stock ATS relative to other trading centers. The Commission also stated market participants also faced potential costs due to increased trading costs if some of the NMS Stock ATSs cease operating as ATSs or there is a reduced entry of new NMS Stock ATSs.

The Commission also stated market participants could receive potential benefits from more information on the operation of ATSs that would be standardized, reducing search costs. The Commission further stated broker-dealers could face potential benefits due to increased competition leading to innovation which could attract more trading volume.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Commission certified the rule would not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551*et seq.*

The Commission published a Notice of Proposed Rulemaking on December 28, 2015. 80 Fed. Reg. 80,908. The Commission received 32 comment letters from a variety of interested persons, including ATSs, a national securities exchange, broker-dealers, institutional investors, industry trade groups, the Commission’s Investor Advocate, and the Attorney General of the State of New York. The comments were addressed in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Commission stated the final rule contains three collections of information, including one new collection. The Commission solicited comments on the new proposed collection in the proposed rule and submitted the collection to the Office of Management and Budget for approval. The Commission estimated the aggregate initial, one-time burden on all ATSS would be 120 hours; it also estimated the total aggregate, ongoing burden per year for all ATSS would be 348 hours.

Statutory authorization for the rule

The Commission promulgated the rule under 15 U.S.C. §§ 78c, 78k-1, 78o, 78q(a), 78q(b), 78w(a), and 78mm.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.