
SEC Adopts New Regulation NMS Rules on Tick Sizes, Access Fees and Market Data

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On September 18, 2024, the Securities and Exchange Commission (SEC or Commission) approved amendments to Regulation NMS (the Amendments)¹ that take several steps intended to narrow bid/ask spreads, reduce transaction costs for investors and enhance market transparency. Opinions among market participants on how best to achieve these goals—and whether the SEC’s adopted approach will realize them—have differed as the Amendments have worked their way through the rulemaking process.

The Amendments will

- establish a second minimum pricing increment (or “tick size”) of \$0.005 under Rule 612 of Regulation NMS for quoting “tick constrained” NMS stocks;
- reduce the access fee caps under Rule 610 of Regulation NMS from \$0.003 (30 mills) per share to \$0.001 (10 mills) per share for NMS stocks quoting at or above \$1.00 (and from 0.3% to 0.1% of the quotation price per share for NMS stocks quoting at less than \$1.00) and require national securities exchanges to make the amounts of all fees and rebates determinable by market participants at the time of execution; and
- accelerate the implementation of the “round lot” and “odd-lot information” definitions adopted under the Market Data Infrastructure Rules (MDI Rules)² and add information about the “best odd-lot orders” (or BOLO) to the definition of “odd-lot information.”

¹ See Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, (Sept. 18, 2024), <https://www.sec.gov/files/rules/final/2024/34-101070.pdf> (Adopting Release).

² Market Data Infrastructure, 86 Fed. Reg. 18596 (Apr. 9, 2021).

For Rule 612, Rule 610 and the “round lot” definition, the compliance date will be the first business day of November 2025. For the “odd-lot information” definition, the compliance date will be the first business day of May 2026.

The Amendments are part of the SEC’s ambitious equity market structure overhaul that includes now-adopted amendments to Rule 605 of Regulation NMS as well as proposals for Regulation Best Execution, the Order Competition Rule and Volume-Based Exchange Transaction Pricing.³ While many aspects remain unchanged from the SEC’s original 2022 proposal,⁴ the Amendments largely simplify the proposed rules and depart from them in several key ways, discussed below.

I. Rule 612: Minimum Pricing Increments

Rule 612 currently requires quotations in NMS stocks priced equal to or greater than \$1.00 to have a minimum pricing increment of \$0.01. While trades can be executed in finer increments, quotations in NMS stocks generally can be displayed, ranked or accepted only in increments of \$0.01 or greater.

The Amendments simplify the complex framework for Rule 612 that the SEC initially proposed. The SEC’s proposed regime would have created four separate tick sizes (\$0.01, \$0.005, \$0.002 and \$0.001) for quoting NMS stocks at or above \$1.00 based on the time weighted average quoted spread (TWAQS) over a prescribed one-month “Evaluation Period” where the tick sizes would be reevaluated every three months.

The Amendments will create only one new minimum increment for quoting NMS stocks at or above \$1.00, so those stocks will be quoted at minimum increments of either \$0.01 or \$0.005.⁵ Tick sizes still will be determined based on the TWAQS over a prescribed Evaluation Period—any NMS stock with a TWAQS of \$0.015 or less will have a minimum quoting increment of \$0.005. However, the SEC modified how and how often tick sizes will be reevaluated under the Amendments. The duration of the Evaluation Period used to determine tick sizes was adjusted to three months instead of one month, and tick sizes will be adjusted every six months instead of every three months.

Notably, the Amendments abandon the controversial notion of a universal trading increment that would have required all trading in NMS stocks (on-exchange or off-exchange) to occur at the same minimum pricing increments as the stock is quoted, subject to limited exceptions. In the Proposing

³ See the WilmerHale client alerts discussing the SEC’s market structure proposals, <https://www.wilmerhale.com/insights/client-alerts/20221216-sec-holiday-reading-list-four-rule-proposals-that-would-overhaul-market-structure-and-how-retail-orders-are-executed>; <https://www.wilmerhale.com/insights/client-alerts/20230216-the-sec-proposes-regulation-best-execution>. See also Volume-Based Exchange Transaction Pricing for NMS Stocks, 88 Fed. Reg. 76282 (Nov. 6, 2023).

⁴ See Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, 87 Fed. Reg. 80266 (Dec. 29, 2022) (Proposing Release).

⁵ The minimum pricing increment for NMS stocks priced at below \$1.00 remains unchanged.

Release, the SEC identified that this proposed change was intended to “level the competitive playing field” between market participants trading on exchanges—where, absent limited exceptions, orders are executed at the same increment at which they are quoted—and off-exchange dealers, which can provide price improvement by executing trades in smaller increments than are available on an exchange.⁶ The minimum trading increment would have restricted off-exchange dealers from executing trades in smaller increments than are available through ordinary trading on an exchange, removing an incentive to route orders to off-exchange dealers. The SEC regards the amended Rule 612 as “only partially address[ing] the competitive dynamic between OTC market makers and exchanges and ATs.”⁷ As a result, the SEC noted that “Commission staff will continue to monitor sub-penny trading to evaluate whether further action is appropriate for the protection of investors and to assure ‘fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets’ in the national market system.”⁸

II. Rule 610: Access Fee Caps and Exchange Fee/Rebate Structures

Rule 610 currently sets the maximum fee that a trading center can charge to execute an order against a protected quotation at \$0.003 (30 mils) per share for NMS stocks quoted at or above \$1.00 (or 0.3% of the quotation price per share for NMS stocks under \$1.00). The proposal would have lowered access fee caps dependent on the applicable minimum pricing increment—either to \$0.001 (10 mils) or \$0.0005 (5 mils) per share for NMS stocks quoting at or above \$1.00.

The Amendments adopt a \$0.001 (10 mils) per share access fee cap for NMS stocks at or above \$1.00 regardless of the applicable minimum pricing increment. The adopted access fee caps are consistent with the proposal, which used a \$0.001 (10 mils) per share access fee cap at the \$0.01 and \$0.005 minimum pricing increments. Similarly, the Amendments would reduce the access fee caps for NMS stocks quoting at less than \$1.00 from 0.3% to 0.1% of the quotation price per share, which is higher than the proposed access fee cap of 0.05% of the quotation price per share. The access fee cap decision was controversial and the subject of debate among the Commission, as Commissioners Peirce and Uyeda expressed concerns about whether a 10 mils access fee cap was optimal or whether another cap (or no cap) might be more appropriate.⁹

⁶ Proposing Release at 80273.

⁷ Adopting Release at p. 85.

⁸ *Id.* The Adopting Release also mentions exchange retail liquidity programs that permit on-exchange trading at increments as small as \$0.001 but acknowledges that they have not attracted significant volume. *See* Adopting Release at p. 251.

⁹ *See* Comm’r Hester M. Peirce, “My Take on Tick: Statement on Adoption of Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders” (Sept. 18, 2024), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-regulation-nms-091824>; *see also* Comm’r Mark T. Uyeda, “Statement on Adoption of Rule Regarding Regulation NMS: Minimum Pricing

The prohibition on national securities exchanges enacting fees, rebates or other remuneration unless they are determinable at the time of execution remains unchanged from the proposal. While the Amendments would not broadly prohibit volume-based transaction pricing, as the SEC has proposed elsewhere,¹⁰ they will change the way in which many exchanges calculate fees and rebates today. For example, to be determinable at the time of execution, a fee and rebate structure that relies on trading volume would have to rely on historical trading volume or other contemporaneously ascertainable metrics instead of future trading volume.¹¹

III. Acceleration of MDI Rules Implementation

The parts of the MDI Rules implementation that were accelerated under the Amendments will result in the exclusive securities information processors (SIPs) collecting, consolidating and disseminating new and additional data within the national market system. The accelerated MDI Rules define “round lot” (which today is typically 100 shares) with respect to NMS stocks as 1, 10, 40 or 100 shares based on the stock’s average closing price and incorporate into core data disseminated by the exclusive SIPs information about odd-lot orders (orders smaller than a round lot), including odd-lot orders at or better than the national best bid/offer (NBBO) and the best odd-lot orders (or BOLO).

The MDI Rules implementation is proceeding largely as proposed, with some minor modifications intended to facilitate the implementation process by the exchanges and the SIPs. In particular, the SEC modified the proposed implementation schedule for the definitions of “round lot” and “odd-lot information” by extending the compliance deadlines to the first business days of November 2025 and May 2026, respectively, to provide more time to operationalize the changes than in the 2022 proposal, which provided a substantially shorter time frame.¹² Additionally, the Amendments revise the “round lot” definition to require semiannual rather than monthly adjustments to a stock’s round lot size by defining a round lot Evaluation Period and by specifying an operative period for that size that aligns the dates for assigning round lots to the dates for assigning minimum pricing increments under Rule 612.

Dissemination of odd-lot information will provide the market with new data points on smaller orders that could inform trading and order routing decisions. However, reiterating a point from the adoption of the MDI Rules, the SEC clarified that while odd-lot information “may be relevant to broker-dealers’ best execution analyses and, in many cases, will facilitate the ability of broker-dealers to

Increments, Access Fees, and Transparency of Better Priced Orders” (Sept. 18, 2024), <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-regulation-nms-091824>.

¹⁰ See Volume-Based Exchange Transaction Pricing for NMS Stocks, 88 Fed. Reg. 76282 (Nov. 6, 2023).

¹¹ See Adopting Release at pp. 156-57.

¹² See Adopting Release at p. 23.

achieve best execution for their customer orders, the Commission ... is not setting forth minimum data elements needed to achieve best execution[.]”¹³

IV. Conclusion

While the Amendments are in many ways a scaled-back version of what the SEC described in the Proposing Release, many facets of the original proposal remain that represent a considerable departure from the existing market structure. These changes will likely impact market liquidity within the NBBO, will change the economics of market participants' businesses, and may alter the existing balance between on-exchange and off-exchange trading. Market participants should keep an eye out for further changes to market structure remaining on the SEC's rulemaking agenda, including further consideration and potential adoption of the Order Competition Rule, Regulation Best Execution, and Volume-Based Exchange Transaction Pricing for NMS Stocks.¹⁴

¹³ See Adopting Release at p. 209.

¹⁴ See SEC, Agency Rule List – Spring 2024, https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode&showStage=active&agencyCd=3235 (last accessed Sept. 19, 2024).

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