

MEMORANDUM

To: File No. S7-05-18

From: Jill S. Henderson
Counsel to Commissioner Kara Stein
U.S. Securities and Exchange Commission

Date: May 22, 2018

Re: Meeting with Representatives from Morgan Stanley

On May 1, 2018, Commissioner Stein, Jill Henderson (Counsel to Commissioner Stein), and Sirimal Mukerjee (Counsel to Commissioner Stein) met with Sapna Patel, Andrew Silverman, Joyce Tavoulareas, and Bill Neuberger of Morgan Stanley. Topics discussed included access fees.

Attachment: Morgan Stanley Presentation

Morgan Stanley



Regulation NMS Evolution

Institutional Equity Division

May 1, 2018

Regulation NMS Evolution

TRADE THROUGH / ORDER PROTECTION RULE

Current Requirement: Cannot trade through better priced, top of book displayed quotes on exchanges absent an exception

Short-Term Considerations

- Keep in place, but allow the two carve outs below to address concerns
- **Volume Threshold** – impose a 2% volume threshold for exchanges (e.g., 6 consecutive months to get in or out)
- **Block Exception** – 50K shares or \$1M notional

Long-Term Considerations

- Regulatory analysis re: whether the rule still serves its intended goals, including protecting retail investors
- If replaced with a Best Execution regime, then need to carefully address concerns

MARKET DATA

Current State: Exchanges sell faster market data at premium pricing; not all market participants are able to pay for it

Short-Term Considerations

- Determine whether current state is acceptable or represents a fundamental fairness issue that needs to be addressed
- SEC should mandate that exchanges provide justification for market data fee increases

Long-Term Considerations

- Allow for competing market data consolidators, or
- Eliminate the SIP / public tape and mandate use of direct feeds from exchanges at a reasonable cost

ACCESS FEES

Current Requirement: Access fees capped at 30 mils per share for top of book protected quotes

Short-Term Considerations

- Need rationale and data, whether structured as a pilot or rule change, to support final outcome – what is the definition of success?
- Reduce fee cap across **all** stocks with gradual cuts every 6 months to collect data (e.g., 30 mils to 20 mils to 10 mils, etc.)
- Rebate ban does not eliminate perceived order routing conflicts

Long-Term Considerations

- Access fees, stock price and tick size are all tied; consider dynamic stock specific ticks with access fees capped at 10% of the tick size (e.g., 10 mils if penny tick; 50 mils if nickel tick)

MORGAN STANLEY PERSPECTIVE

- US equities markets generally function well – but regulation needs to keep pace with technological and trading evolution
- No revisions 10+ years led to aggressive order handling practices and regulation by enforcement
- Review of Reg NMS as a whole is therefore warranted – major issues are intertwined

EXCHANGE STRUCTURE EVOLUTION

Current State: Potential for conflict when for-profit exchanges regulate member firms / competitors, limit their liability, charge monopoly pricing and draft NMS plans

Short-Term Considerations

- Exchanges should **not** have immunity / limited liability for their commercial functions and decisions
- Exchange monopoly costs (e.g., market data, connectivity, auction fees) need to be kept in check by the SEC
- SEC should **not** delegate rulemaking to exchanges

Long-Term Considerations

- Exchanges should **not** have regulatory oversight over their competitors (i.e., cannot be a referee and a player); revisit entire SRO structure

History of Morgan Stanley's Views on Order Handling Practices

For many years, Morgan Stanley has publicly advocated for more detailed disclosures to clients regarding the manner in which brokers handle their orders, including with respect to any dark pools that they may operate.

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| 2008 | Series of presentations to inform clients, the SEC and other regulators globally of various dark pool and aggressive broker order handling practices (“Shades of Gray”) |
| 2008 | Questions for Clients to Ask of Their Dark Pool Providers |
| 2009 | Comment Letter on NASDAQ / BATS Flash Orders |
| 2010 | Comment Letter on SEC’s Dark Pool / IOI Proposal |
| 2010 | Questions for Clients to Ask Brokers re Order Handling Practices |
| 2010 | SEC Market Structure Roundtable – Dark Liquidity Panel Statement |
| 2011 | Presentation to the SEC on Order Handling Practices and Disclosures |
| 2013 | Presentation to the SEC on an Update on Equity Market Structure |
| 2014 | Note to Clients – Morgan Stanley’s Views on Equity Market Structure |
| 2015 | Presentation to the SEC on Order Handling Transparency |
| 2015 | SEC EMSAC Meeting – Regulatory Structure of Trading Venues Panel |
| 2016 | Comment Letter on ATS-N / Dark Pool Transparency Proposal |
| 2018 | Video Call with SEC Staff on ATS-N and Order Handling Transparency |

Morgan Stanley’s public comment letters, presentations and statements on various market structure topics are available at <http://www.morganstanley.com/institutional-sales/mset-regulatory-communications>.

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