Comment on SEC File No. S7-187-23

Volume-Based Exchange Transaction Pricing for NMS Stocks

I am writing as a private individual and small investor to express my support generally for the proposed rule to prohibit volume-based transaction pricing for agency-related orders in certain National Market System (NMS) stocks. I believe the proposed rule would enhance the fairness and efficiency of the market, and protect the interests and confidence of investors and customers.

In general, I support the rule because it could reduce the conflict of interest between brokers and their customers, and avoid routing decisions based on volume-based pricing tiers that do not benefit the customers. Routing orders based on volume-based pricing could harm individual investors by compromising their best execution and expose them to information leakage and misuse of their transaction data. Moreover, it could enhance the transparency and fairness of exchange transaction pricing, because exchanges would have to disclose the number of members that qualify for each pricing tier, and would have to adopt rules and policies to prevent evasion of the prohibition. Furthermore, it could foster better competition among exchanges and among brokers. In general, the proposed rule could help protect individual investors from adverse effects and promote their confidence in the integrity of the market.

However, I also have some comments and observations on the rule, which I hope the Commission will take into consideration.

Potential Evasion of the Prohibition by the Use of Proprietary Orders

The proposed rule would prohibit volume-based transaction pricing in certain NMS stocks for agency-related orders, but not for proprietary orders. Agency-related orders are orders that brokers execute on behalf of their customers, while proprietary orders are orders that brokers execute for their own account. The proposed rule aims to reduce the conflict of interest that brokers may face when they route their customers' orders for execution, based on the fees or rebates they receive from exchanges. However, the proposed rule does not prevent brokers from using volume-based transaction pricing for their own orders, which may create an opportunity for brokers to evade the prohibition by disguising their agency orders as proprietary orders. This could undermine the effectiveness and fairness of the rule, and harm the interests and protection of customers.

I suggest that the Commission should address this potential loophole, and require brokers to disclose and justify their order classification and routing decisions, and to have anti-evasion measures in place.

Limited Usefulness of Disclosure of Pricing Tiers

The proposed rule would require exchanges to disclose the number of members that qualify for each pricing tier, but not the identity of those members. Pricing tiers are the different levels of fees or rebates that exchanges offer to their members based on their trading volume or activity. The proposed rule aims to enhance the transparency and fairness of exchange transaction pricing, by requiring exchanges to disclose the number of members that qualify for each pricing tier on a monthly basis. However, the proposed rule does not require exchanges to disclose the identity of those members, which may diminish the usefulness and value of the disclosure, as it would not reveal the concentration or market power of the high-volume brokers. This could affect the competition and behavior of exchanges and brokers, and the quality and liquidity of stocks.

I suggest that the Commission require exchanges to disclose the identity of the members that qualify for each pricing tier, and to explain the rationale and evidence for offering such pricing tiers, as well as their impact on the market and the customers. Although I recognize that this may raise some financial privacy issues for the members, I believe that ensuring market fairness and integrity outweighs this concern, and that this disclosure is a reasonable and necessary measure for those who benefit from pricing discounts.

Inconsistency in Regulation Across Different Markets

The proposed rule would apply only to NMS stocks, but not to other securities such as options or ETFs. NMS stocks are stocks that are listed on a national securities exchange, and are subject to the rules and regulations of the National Market System. The proposed rule aims to foster competition and innovation among exchanges and among brokers, by prohibiting exchanges from offering volume-based transaction pricing for agency-related orders in certain NMS stocks. However, the proposed rule does not apply to other securities that are traded on exchanges or other trading venues, such as options or ETFs, which may also use volume-based transaction pricing or other pricing methods that could affect the market and the customers. This could lead to a disparity in the regulation of exchange transaction pricing across different markets, and could have unintended consequences on the market structure and behavior. I suggest that the Commission should consider the possible effects of the rule on other securities, and whether the rule should be extended or modified to cover them.

Definition of the Term "volume-based transaction pricing"

The proposed rule does not appear to define the term "volume-based transaction pricing" or to provide any examples of how such pricing works in practice. As the rule suggests, volume-based transaction pricing is a pricing method where a business offers different prices to its customers based on their trading volume or activity. For example, a business may charge lower fees or pay higher rebates to customers who trade more shares or reach higher levels of transactions on its platform. This pricing method is commonly used by exchanges to attract or retain members who trade in NMS stocks. However, the proposed rule does not explain what constitutes volume-based transaction pricing, or how it differs from other types of pricing methods, such as flat fees, tiered fees, or maker-taker fees. The proposed rule also does not provide any illustrative scenarios of how volume-based transaction pricing affects the market and the customers, such as how it influences the routing and execution of orders, the quality and liquidity of stocks, the competition and fairness among market participants, and the protection and interests of investors. This makes it difficult for me and other commenters to understand the scope and impact of the rule, and to evaluate its costs and benefits.

I suggest that the Commission should precisely define the term "volume-based transaction pricing" and explain how it relates to other pricing methods that exchanges use or may use in the future. The Commission should also provide some illustrative scenarios of how volume-based transaction pricing affects the market and the customers under different situations and assumptions. The Commission should also explain the rationale and evidence for prohibiting volume-based transaction pricing for agency-related orders, and requiring disclosure and anti-evasion measures for proprietary orders. The Commission should also solicit feedback from the public on the definition, application, and effects of volume-based transaction pricing, and the impact of the rule on the market and the customers.

Unclear Criteria and Process for Exemptions or Waivers

The proposed rule does not specify the criteria or process for granting exemptions or waivers from the prohibition for certain agency-related orders or exchanges. The proposed rule states that the Commission may grant exemptions or waivers from the prohibition, either on its own motion or upon application by an exchange, if it finds that such exemptions or waivers are in the public interest, and are consistent with the protection of investors. However, the proposed rule does not explain how the Commission would make such findings, or what factors or conditions it would consider in granting exemptions or waivers. The proposed rule also does not describe how an exchange or any other interested party could apply for or challenge an exemption or waiver, or what procedures or timelines would apply to such applications or challenges. This creates uncertainty and inconsistency in the application and enforcement of the rule, and could lead to unfair or arbitrary outcomes. For example, if an exchange or a broker believes that volume-based transaction pricing is necessary or appropriate for a certain type of order or stock, how could they request or obtain an exemption or waiver from the Commission? How would the Commission evaluate and decide on such requests, and how would it communicate its decisions to the public? How would the Commission monitor and review the effects of the exemptions or waivers on the market and the customers? How would the Commission ensure that the exemptions or waivers are not abused or evaded by the exchanges or the brokers?

I suggest that the Commission should establish clear and objective standards and procedures for granting exemptions or waivers, and explain the rationale and evidence behind each decision. The Commission should provide guidance on the criteria and process for requesting or challenging exemptions or waivers, and ensure that such requests or challenges are handled in a transparent and timely manner. The Commission should also disclose the details and reasons for each exemption or waiver that it grants, and the impact and outcomes of such exemptions or waivers on the market and the customers. The Commission should also have effective mechanisms to oversee and enforce the compliance with the exemptions or waivers, and to revoke or modify them if necessary or appropriate.

<u>Potential Interaction or Conflict with Other Rules or Regulations</u>

The proposed rule does not address the potential interaction or conflict between the prohibition and other existing or proposed rules or regulations that affect exchange transaction pricing, such as the Transaction Fee Pilot or the Order Protection Rule. The Transaction Fee Pilot is a two-year program that tests the effects of lowering the fee caps for certain NMS stocks, as authorized by the Commission in 2018. The Order Protection Rule is a rule that requires trading centers to execute orders at the best available price, as established by Rule 611 of Regulation NMS. The proposed rule does not explain how the prohibition would interact with these or other rules or regulations, and whether it would be consistent or compatible with them. This might create confusion and complexity for the exchanges and brokers who have to comply with multiple rules or regulations, and could undermine the effectiveness or efficiency of the rule.

I suggest that the Commission should coordinate and harmonize the prohibition with other relevant rules or regulations, and analyze the cumulative impact of the rule on the market and the customers. The Commission should explain how the prohibition would affect or be affected by other rules or regulations, and whether it would require any adjustments or amendments to them. The Commission should also assess how the prohibition would affect the market quality and behavior metrics, such as spreads, depth, volume, volatility, and price discovery, of different stocks, depending on their eligibility for the prohibition and other rules or regulations. The Commission should also consider the possible feedback effects and interactions among the prohibition and other rules or regulations, and how they would affect the market structure and behavior.

<u>Unexplained Impact on Fee Caps and Access Fee Pilot Programs</u>

The proposed rule does not explain how the prohibition would affect the existing fee caps and access fee pilot programs that apply to certain NMS stocks. The fee caps are the maximum fees that exchanges can charge or pay for accessing or providing liquidity, as established by Rule 610(c) of Regulation NMS. The access fee pilot programs are experimental programs that test the effects of different fee caps on the market quality and behavior, as authorized by the Commission in 2018. The proposed rule does not specify how the prohibition would interact with the fee caps and the access fee pilot programs, and whether it would override, modify, or complement them. This creates confusion and inconsistency in the calculation and application of fees and rebates for different stocks, depending on their eligibility for the prohibition, the fee caps, and the access fee pilot programs. For example, if a stock is subject to both the prohibition and the access fee pilot program, which fee cap would apply to its transactions? How would the prohibition affect the data collection and analysis of the access fee pilot program? How would the prohibition affect the incentives and behavior of exchanges and brokers who participate in the access fee pilot program? These are some of the questions that the proposed rule does not address or answer.

I suggest that the Commission should clarify the relationship between the prohibition and the fee caps and the access fee pilot programs, and assess the effects of the rule on the market quality and liquidity of different stocks. The Commission should explain how the prohibition would affect the existing fee caps and the access fee pilot programs, and whether it would require any adjustments or amendments to them. The Commission should also analyze how the prohibition would affect the market quality and liquidity metrics, such as spreads, depth, volume, volatility, and price discovery, of different stocks, depending on their eligibility for the prohibition, the fee caps, and the access fee pilot programs. The Commission should also consider the possible feedback effects and interactions among the prohibition, the fee caps, and the access fee pilot programs, and how they would affect the market structure and behavior.

Unaddressed Impact on Market Data Revenue Allocation

The proposed rule does not address the potential impact of the prohibition on the market data revenue allocation among exchanges. This may affect the incentives and behavior of exchanges and brokers regarding the provision and consumption of market data, and could have implications for the market transparency and fairness. I suggest that the Commission should examine the effects of the rule on the market data revenue allocation, and consider the possible adjustments or reforms that may be needed to ensure the optimal distribution and use of market data.

Unconsidered Alternatives or Modifications to the Prohibition

The proposed rule does not evaluate the possible alternatives or modifications to the prohibition, such as allowing volume-based pricing for agency-related orders under certain conditions or thresholds, or imposing a uniform fee schedule for all exchanges. This could limit the flexibility and innovation of exchange transaction pricing, and the opportunity for public comment on other options that might be better or more effective than the prohibition. I suggest that the Commission should explore and evaluate the possible alternatives or modifications to the prohibition, and solicit feedback from the public on their merits and drawbacks.

Thank you for considering my comments on the proposed rule. I appreciate the opportunity to provide my feedback on the rule.

Michael Ravnitzky
Silver Spring, Maryland