

January 04, 2024
c/o Vanessa A. Countryman
Secretary U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 205499-1090
rule-comments@sec.gov

Re: Rule Proposal No. 34-98766; File No. S7-18-23 Volume-Based Exchange Transaction Pricing for NMS Stocks

Dear Chairman Gensler, Commissioners Peirce, Crenshaw, Uyeda, Lizarraaga, and the SEC review team:

I appreciate the chance to share my thoughts on the proposed Rule No. 34-98766 (File No. S7-18-23) concerning Volume-Based Exchange Transaction Pricing for NMS Stocks. It's evident that the undisclosed volume tier pricing on transparent exchanges can create conflicts of interest between agents and their clients. However, any regulation that potentially diverts trading away from transparent markets by removing execution rebates is a step in the wrong direction. It's well-established that funneling all trading to transparent venues reduces execution costs, enhances price discovery, and fosters competition. Therefore, I believe the SEC should prioritize enhancing liquidity in transparent markets in its regulatory efforts surrounding equity market structures.

Rather than concentrate on specific, less common issues such as this, I urge the SEC to address the broader issue of payment for order flow. Implementing a 'trade-at' rule would significantly streamline S7-31-22 and adopting the SEC level best execution standard (S7-32-22) could effectively address all conflict of interest concerns. For instance, if agency brokers were required to pass all rebates and fees to their clients while ensuring the lowest cost execution across all venues, this would effectively resolve the issue.

A genuine obligation for agency brokers to achieve best execution (beyond the current nominal enforcement by FINRA) combined with a mechanism for clients to report and seek redress for violations directly to the SEC (instead of the current ineffective system under FINRA) would have a self-regulating impact similar to the SOES system in the 1990s. While I recognize and commend the SEC's efforts to bolster competition and transparency, I cannot support the adoption of Rule Proposal No. 34-98766. This rule poses a risk of increasing trading on dark exchanges, which lack oversight regarding volume tier payments. Instead, I recommend that the SEC prohibits all off-exchange trading that isn't first presented to at least the primary listing exchange, and focuses on ensuring best execution to channel all trading onto transparent venues.

Thank you for considering my viewpoint.
Sincerely,

Johannes Polta