Quarterly Perspectives

4Q 2024 SEC Division of Trading & Markets
Broker-Dealers

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Contents

Introduction

This paper provides an overview of recent standard-setting activity by the SEC's Division of Trading and Markets, reminders on newly effective and soon-to-be-effective rules, a regulatory agenda update, recent enforcement actions, and exam focus areas. We have included links to resources from Forvis Mazars for a deeper dive into implementing or planning for new guidance.

On November 21, 2024, SEC Chair Gary Gensler announced he will step down on January 20, 2025, ending a three-and-a-half-year regime that saw the rise of cryptocurrency, recovery from a global pandemic, and record bank failures. During his tenure, the SEC modernized trading conventions, including T+1 settlement and centralizing Treasury clearing. Several final rules and proposals were challenged for exceeding the SEC's scope of authority. A day later, Democratic SEC Commissioner Jaime Lizárraga announced his intention to step down on January 17, 2025, two years ahead of his term, which was scheduled to end in 2027. His replacement also will require Senate approval. This will leave only Democratic Commissioner Caroline Crenshaw and Republican Commissioners Hester Peirce and Mark Uyeda to lead the agency. Under SEC quorum rules, a three-member commission can only advance a regulation if all the commissioners participate in a vote. President-elect Donald Trump has announced Paul Atkins as his nominee for the SEC chair.[1] Atkins previously served as a commissioner from 2002 to 2008. Crenshaw's term ended in June 2024 and she can serve at the SEC until December 2025 if not confirmed by the Senate for another term. Atkins will require Senate approval and based on prior administrative turnovers, this could happen as soon as April or May 2025. Crenshaw's approval for an additional term could be delayed until after the inauguration.

In presidential election years, any regulations passed within the previous 60 legislative days are subject to the *Congressional Review Act* (CRA) and could be overturned. The only final rule issued by the Division of Trading and Markets in the fourth quarter was the Covered Clearing Agency Rule on October 25, 2024. Unraveling existing rules outside the CRA is not a fast process. Once a new chair is named and confirmed, a majority of the five-person commission is required for any proposal and final rules, which also are subject to the *Administrative Procedure Act*. The SEC chair sets the enforcement agenda and could instruct SEC staff not to pursue cases for certain rules. The SEC chair also can stop agency lawyers from defending existing legal challenges in court. Congress also could attach a rider to legislative funding to the SEC prohibiting the agency from enforcing certain rules.

The SEC's directors of Enforcement, Trading and Markets, and Corporation Finance have announced their resignations. The customary process is for interim acting directors to serve until the incoming SEC chair names new directors in 2025. Enforcement actions are likely to continue in the short term since the vast majority of cases are fraud related. By mid-2025, with a new chair and directors in place, there could be a change in the size of corporate penalties and enforcement actions for compliance, control, and record-keeping failures without fraud.

As noted above, three commissioners are required for a vote on proposals and final rules; however, under the *Sunshine Act*, the two Republican commissioners could meet and begin planning a new regulatory agenda even before a new chair is confirmed. Peirce and Uyeda both worked with Atkins at the SEC during his previous tenure.

Forvis Mazars will continue to monitor these enforcement actions and legal developments.

[1] "Trump nominates cryptocurrency advocate Paul Atkins as SEC chair," apnews.com, December 4, 2024.

I. Enforcement Actions

Regulation Best Interest

On September 18, 2024, the SEC charged a registered broker-dealer for failing to maintain and enforce policies and procedures reasonably designed to comply with Regulation Best Interest (Reg BI) for recommending a structured note derivative following a merger with another broker-dealer. When customer data was transferred, the information needed for compliance with the firm's Reg BI policies and procedures was inaccurate. Employees from the merged firm did not have access to the acquiring broker-dealers exception reporting site where the structured notes were flagged as being noncompliant.

"This action underscores that broker-dealers must ensure appropriate compliance around complex financial products and that it is not enough to simply have written policies; firms must also enforce them."

Osman Nawaz, former chief of the SEC Enforcement Division's Complex Financial Instruments Unit

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Artificial Intelligence (AI)

On October 10, 2024, the SEC settled with several parties for raising money for an investment adviser that was falsely described as having an AI-driven platform for trading securities.

"As AI becomes more popular in the investing space, we will continue to be vigilant and pursue those who lie about their firms' technological capabilities and engage in 'AI washing'."

Andrew Dean, co-chief of the SEC's Asset Management Unit

II. Exam Priorities

On October 21, 2024, the SEC's Division of Examinations (Division) issued its Fiscal Year 2025 Examination Priorities that support its stated mission—promote compliance, prevent fraud, monitor risk, and inform policy. The group will continue its focus on compliance, governance practices, and cybersecurity. There was almost no change in the focus areas from 2023. Broker-dealer exams will continue to focus on recommended products that are complex, illiquid, or present higher risk to investors (highly leveraged or inverse products, crypto assets, structured products, alternative investments, non-SEC-registered products, products with complex fee structures or return calculations, or products based on exotic benchmarks).

Regulation Best Interest

Examiners will be evaluating the following:

- If the broker has a reasonable basis to believe a recommendation is in the customer's best interest and does not place the broker's interests ahead of the customer's interests
- Conflict of interest disclosures made to investors
- Conflict identification and mitigation and elimination practices
- Processes for reviewing reasonably available alternatives
- Factors considered based on the investor's investment profile

Examinations also may focus on recommendations:

- Using automated tools or other digital engagement practices
- Related to opening different account types, such as option, margin, and self-directed IRA accounts
- Made to certain types of investors, such as older investors and those saving for retirement or college

For dual registrants, exams will focus on reviews of firms' process for identifying, mitigating, and eliminating conflicts of interest, account allocation practices, and account selection practices, *e.g.*, brokerage versus advisory, including when rolling over to an IRA or transferring an existing brokerage account to an advisory account.

Resource: Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations

Customer Relationship Summary

Examiners will evaluate how a broker-dealer describes the relationships and services that it offers to retail customers, fees and costs, conflicts of interest, and whether the broker-dealer discloses any disciplinary history.

Financial Responsibility Rules

Examinations will continue to focus on broker-dealer compliance with the net capital rule and the customer protection rule and related internal processes, procedures, and controls. Areas of review will include broker-dealer accounting practices impacted by recent regulatory changes, as well as the *timeliness* of notifications and filings. Reviews also will focus on broker-dealers' operational resiliency programs, including supervision of third-party or vendor-provided services that contribute to the records firms used to prepare their financial reporting information. Examinations will assess broker-dealer credit, market, and liquidity risk management controls to ensure that firms have sufficient liquidity to manage stress events.

Trading Related Practices

Reviews will consider the structure, marketing, fees, and potential conflicts associated with offerings by broker-dealers to retail customers, including bank sweep programs, fully paid lending programs, and mobile apps/online trading platforms. Exams also will review trading practices for pre-initial public offering companies and the sale of private company shares in secondary markets. The Division also will be checking if broker-dealers are appropriately relying on the bona fide market-making exception under Regulation SHO.

III. Regulatory Agenda

At the time of publication, the most recent document was the Spring 2024 Regulatory Agenda released in July 2024. The Fall Regulatory Agenda was submitted in September 2024 before the election and Gensler's resignation announcement but has not been released at the time of this article's publication. The new chair is likely to set different priorities. The SEC is not precluded from considering or acting on any matter not included in the agenda, and an agency is not required to consider or act on any matter that is included in the agenda.

Spring 2024 Reg Flex Agenda – Division of Trading & Markets		
Planned Proposals (Remaining)	**Planned Final Rules (Remaining)**	
Single stock exchange-traded funds	CAT data security	Cybersecurity broker-dealers
Regulation D improvements	Exchange definition	Predictive data

Regulation ATS modernization	Regulation best execution	Securities-based swaps reporting
	Order competition	NMS stock volume-based pricing

IV. Rule Setting 4Q 2024

Final Rules

1. Covered Clearing Agency (CCA) Resilience

On October 25, 2025, the SEC issued a final rule to improve CCA risk management and resilience. These new requirements for CCAs include:

- Policies and procedures to establish risk-based margin systems for CCAs that provide central counterparty services, including the authority to make intraday margin calls as frequently as circumstances warrant (including when risk thresholds specified by the CCA are breached or when the products cleared or markets served display elevated volatility), and documents when the CCA determines not to make an intraday call pursuant to its written policies and procedures.
- Recovery and orderly wind-down plans with content requirements, including elements related to planning, timing, implementation, testing, and board approval.

2. Publication or Submission of Quotations Without Specified Information

On November 22, 2024, the SEC issued a no-action letter that indefinitely suspends the impending January 2025 compliance deadline for the 2020 final rule, Publication or Submission of Quotations Without Specified Information, for fixed income securities that meet certain criteria. The no-action letter reverses a November 2022 no-action letter that temporarily suspended enforcement until January 4, 2025. The new no-action letter has no expiration date—it is an indefinite suspension.

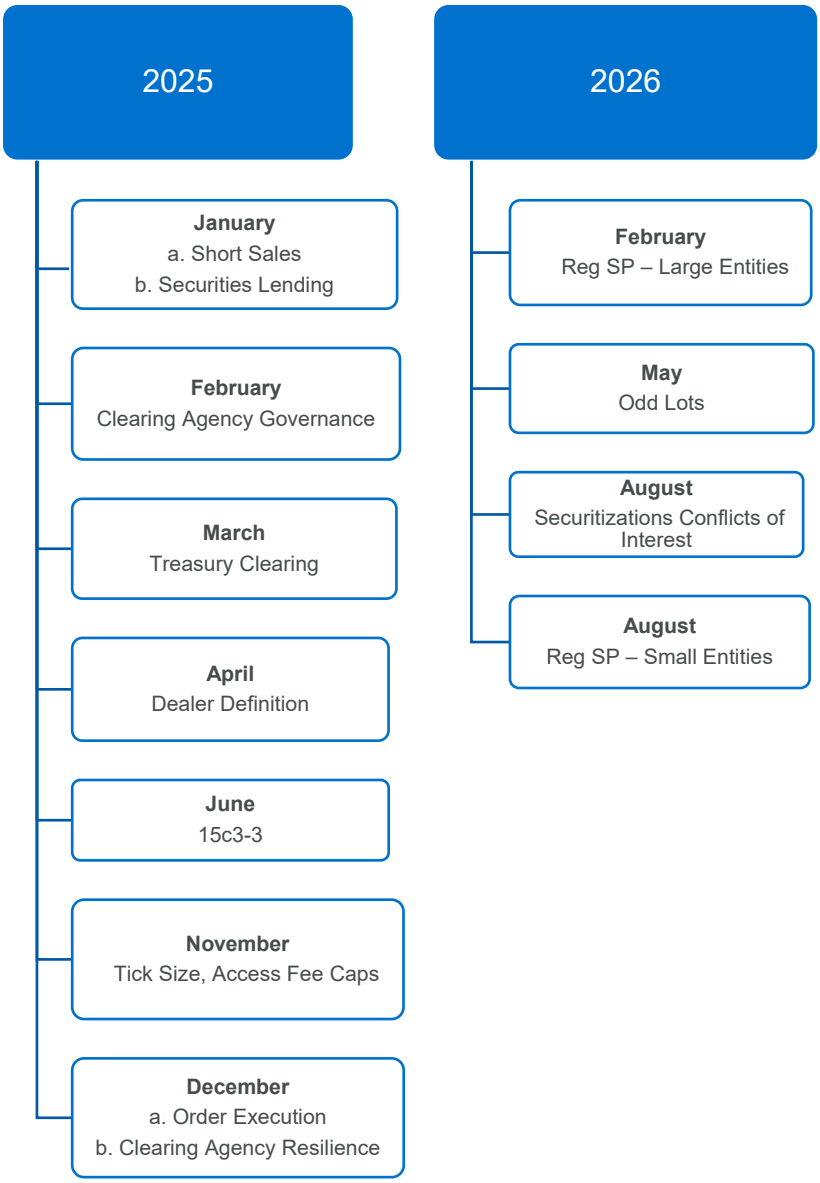
Resource: SEC Indefinitely Suspends Fixed Income Broker-Dealer Quotation Rule

3. Customer & Broker-Dealer Reserve Requirements (15c3-3)

On December 20, 2024, the SEC approved a final rule that requires daily 15c3-3 calculations and lockup for carrying broker-dealers with customer and proprietary accounts of broker-dealers credits of more than $500 million. Broker-dealers that perform a daily reserve computation would be permitted to reduce customer-related receivables by 2% rather than 3%.

Resource: Coming Soon

V. Final Rules – Newly Effective & on the Horizon



A. 2025 Compliance Dates

1. Short Sales

On October 13, 2023, the SEC issued new Rule 13f-2 and updated the consolidated audit trail (CAT) to increase market transparency on short activity on equity securities. Institutional investment managers must report certain short sale-related data to the SEC monthly, 14 days after month-end. At the end of the following month, the SEC would publicly report aggregate data about large short positions, including daily short sale activity for each individual security.

Resource: SEC Finalizes New Short Sale Disclosures

2. Securities Loans Reporting

On October 13, 2023, the SEC approved new Rule 10c-1a to increase transparency in the securities lending market by mandating disclosures for security lenders. This rule not only covers investment companies but also banks, insurers, and pension plans. Only 12 pieces of data are required, but the implementation effort is substantial.

Resource: SEC New Disclosures on Securities Lending

3. Clearing Agency Governance & Conflicts of Interest

On November 16, 2023, the SEC adopted rules to establish new governance requirements for all registered clearing agencies, including requirements:

- For independent directors and for the composition of a registered clearing agency's board of directors, nominating committee, and risk management committee.
- To identify, mitigate, or eliminate conflicts of interest involving directors or senior managers and to document such actions.
- For policies and procedures that obligate directors to report conflicts of interest.
- For policies and procedures for the management of risks from relationships with service providers for core services.
- For policies and procedures for the board to solicit, consider, and document the views of participants and other relevant stakeholders.

4. Treasury Clearing & Broker-Dealer Customer Protection Rule

On December 13, 2023, the SEC issued a final rule expanding the use of central clearing for U.S. Treasury securities for secondary market transactions, including:

- All repurchase and reverse repurchase agreements collateralized by U.S. Treasury securities to which a direct participant is a counterparty.
- All purchase and sale transactions of U.S. Treasury for direct participants who are acting as interdealer brokers.
- All purchases and sales of U.S. Treasury securities between a direct participant and a registered broker-dealer, government securities dealer, or government securities broker; a hedge fund; and a levered account.

To address a jump in margin requirements resulting from increased central clearing, the proposal also would update the broker-dealer customer protection rules to permit margin required and on deposit at a CCA to be included as a debit item in the customer reserve formula, subject to certain conditions.

Risk Management, Customer Protection, & Access
March 31, 2025

Cash Transactions
December 31, 2025

Repo Transactions
June 30, 2026

5. Dealer Definition

On February 6, 2024, the SEC approved updates to the dealer definition that will expand the scope of market participants required to register with the SEC as dealers. The changes clarify "in the regular course of business" and will capture roughly 40 principal trading firms, as well as private funds and even some cryptocurrency asset trading. Absent an exception or exemption, in-scope entities must register with the SEC as a dealer, become a member of a self-regulatory organization (SRO), and comply with federal securities laws and regulatory obligations. The rule exempts SEC-registered investment companies.

Resource: SEC's New Dealer Definition – Who's Now in Scope?

Effective Date
April 29, 2024

Compliance Date
April 29, 2025

6. Order Execution Disclosures

On March 6, 2024, the SEC issued a final rule updating order execution rules as follows:

- Expand the scope of entities subject to Rule 605 by requiring broker-dealers that introduce or carry 100,000 or more customer accounts, single-dealer platforms, and entities that would operate qualified auctions to make available to the public monthly execution quality reports.
- Amend the definition of "covered order" to include certain orders submitted outside of regular trading hours, orders submitted with stop prices, and nonexempt short sale orders.
- Recategorize required information, including changing the order type categories and order size categories to include fractional share orders, odd-lot orders, and larger-sized orders.
- Eliminate time-to-execution categories in favor of average time to execution, median time to execution, and 99th percentile time-to-execution statistics, each as measured in increments of a millisecond or finer.
- Amend the information required to be reported under the rule, including changing the realized spread statistics to 15-second and one-minute realized spread and requiring new statistical measures of execution quality that could be used to evaluate price improvement and size improvement for all order types, additional price improvement statistics for market and marketable order types, and certain statistical measures that could be used to measure execution quality of nonmarketable limit orders.
- Make a summary report available.

Effective Date
June 14, 2024

Compliance Date
December 12, 2025

B. 2026 Compliance Dates

1. Regulation S-P, Privacy of Consumer Information

On May 16, 2024, the SEC issued a final rule updating Regulation S-P (issued in 2000). The rule covers broker-dealers (including funding portals), investment companies, registered investment advisers, and transfer agents. Changes include:

- Covered institutions must develop, implement, and maintain written policies and procedures for an incident response program to address unauthorized access to or use of customer information. The incident response program should be reasonably designed to detect, respond to, and recover from unauthorized access to or use of customer information.
- Covered institutions must have written policies and procedures to provide timely notification as soon as practicable (no later than 30 days after an incident) to affected individuals whose sensitive customer information was or is reasonably likely to have been accessed or used without authorization.
- Broadening the scope of information covered by Regulation S-P requirements.

Resource: SEC Issues New Regulation S-P Rules

2. Conflicts of Interest – Securitization

On November 27, 2023, the SEC issued a final rule completing a Dodd-Frank Act mandate to prohibit conflicts of interest in securitizations. The rule covers an asset-backed security (ABS) and hybrid cash and synthetic ABS and applies to any underwriter, placement agent, initial purchaser, or ABS sponsor. The rule prohibits a securitization participant from entering a conflicted transaction for a period ending one year after the date of the first closing of the ABS' sale. Conflicted transactions are defined as follows:

- Transaction is:
    - A short sale of the ABS.
    - The purchase of a credit default swap or other credit derivative that entitles the securitization participant to receive payments upon the occurrence of specified credit events with respect to the ABS.
    - The purchase or sale of any financial instrument (other than the relevant ABS) or entry into a transaction that is substantially the economic equivalent of a transaction described in the first two bullet points above, other than—for the avoidance of doubt—any transaction that only hedges general interest rate or currency exchange risk.
- Materiality – Is there a substantial likelihood a reasonable investor would consider the relevant transaction important to the investor's investment decision, including a decision on whether to retain the ABS?

There are certain exceptions for hedging and risk management.

C. Outstanding Proposals

A. 2023 Proposals

1. Cybersecurity Risk Management – Broker-Dealers & Other Market Participants

On March 15, 2023, the SEC issued a proposal that addresses cybersecurity risk management policies and procedures for broker-dealers, the Municipal Securities Rulemaking Board, clearing agencies, major security-based swap (SBS) participants, national securities associations, national securities exchanges (NSEs), SBS data repositories, SBS dealers, and transfer agents (collectively, "market entities"). Under new Rule 10, all market entities must establish, maintain, and enforce written policies and procedures that are reasonably designed to address their cybersecurity risks. At least annually, market entities also would be required to review and assess the design and effectiveness of their cybersecurity policies and procedures, including whether they reflect changes in cybersecurity risk over the review period. Covered entities also would need to give the SEC immediate written electronic notice of a significant cybersecurity incident upon having a reasonable basis to conclude that the significant cybersecurity incident had occurred or is occurring. New Form SCIR would require information about the entity's efforts to respond to—and recover from—the cyber incident and would be filed with the SEC and posted on the entity's website. Covered broker-dealers, subject to additional requirements, would include carrying and introducing broker-dealers, broker-dealers with regulatory capital equal to or exceeding $50 million, broker-dealers with total assets equal to or exceeding $1 billion, broker-dealers that operate as market makers, and broker-dealers that operate an alternative trading system (ATS).

> The SEC received 245 letters mostly supporting the proposal. Some respondents felt the scope was too broad and costly, while others suggested the scope could be expanded.

2. Regulation System Compliance & Integrity (SCI)

Regulation SCI was adopted in 2014 to strengthen the technology infrastructure of the U.S. securities markets. Regulation SCI applies to certain entities and covers automated and similar systems that directly support any one of six key securities market functions—trading, clearance and settlement, order routing, market data, market regulation, or market surveillance—as well as systems that, if breached, would be reasonably likely to pose a security threat to SCI systems. These systems include those outsourced to third parties. The proposed amendments would expand the definition of SCI entities to include:

- Registered SBS data repositories.
- Broker-dealers registered with the commission under Section 15(b) that exceed a total assets threshold or a transaction activity threshold in National Market System (NMS) stocks, exchange-listed options, U.S. Treasury securities, or agency securities.
- All clearing agencies exempted from registration.

The proposal updates and strengthens Regulation SCI, including to:

- Specify that an SCI entity's required policies and procedures include:
  - An inventory, classification, and life cycle management program for SCI systems and indirect SCI systems.
  - A program to manage and oversee third-party providers, including cloud service providers, that provide or support SCI or indirect SCI systems.
  - Business continuity and disaster recovery.
  - A program to prevent unauthorized access to SCI systems and information therein.
  - Identification of current SCI industry standards with which each such policy and procedure is consistent, if any.

- Amend the definition of “systems intrusion” to include additional types of cyber events and threats, which is intended to capture cybersecurity events such as certain distributed denial-of-service attacks and require notification of systems intrusions to the SEC without delay.
- Update the SCI review to specify that objective personnel assess the risks to covered systems, internal control design and operating effectiveness, and third-party provider management risks and controls, and require penetration testing at least annually.
- Specify that SCI entities include key third-party providers in annual BC/DR testing.

The SEC received 40 letters with pushback from industry participants, most notably from large market makers and cloud providers who would be covered by the rule for the first time. While most agreed the data security is critically important to capital markets, the feedback said that the SEC’s “isolated and piecemeal approach to comprehensive rulemaking is substantively and procedurally flawed.” NYCE, CBOE, OCC, and DTCC weighed in with several suggestions for improving the SCI regulations.

3. Large Securities-Based Swaps Reporting

SBSs include credit default swaps and total return swaps on equity securities. On December 15, 2021, the SEC proposed new rules requiring that large SBS positions be reported to the SEC and restricting SBS dealer personnel from unduly influencing chief compliance officers in the performance of their duties. The SEC also reproposed regulations—first proposed in 2010 following the 2007 mortgage crisis—prohibiting fraudulent, deceptive, and manipulative conduct in connection with SBSs.

On June 7, 2023, the SEC issued a final rule on the fraud and manipulation portions of the proposal and on June 20, 2023, the SEC reopened the comment period and released supplemental economic data for the portion of the proposal that related to the reporting of large SBSs positions.

The first proposal received more than 500 comment letters with very little support. Most felt existing rules were working as intended and there has not been a full review of the impacts of the recently effective Regulation SBSR. Many felt that the reporting costs, impact on liquidity, and inadequate safe harbors more than outweighed the perceived benefits. Even those who generally supported closing existing reporting loopholes call for raised thresholds and more than one day for required reporting. More than 1,300 comment letters were received for the reissued proposal. Feedback was mixed. Individual investors supported the changes while market participants and trade associations challenged the cost and cited operational hurdles, especially for smaller firms. Most cited the low threshold for reporting large swap-based positions.

4. Conflicts of Interest on Predictive Data Analytics Use by Broker-Dealers & Investment Advisers

On July 26, 2023, the SEC issued a proposal that would require:

- A firm to eliminate or neutralize the effect of conflicts of interest related to the firm’s use of covered technologies in investor interactions that place the firm’s or its associated person’s interest ahead of investors’ interests.
- Investment advisers and broker-dealers using covered technology must have written policies and procedures reasonably designed to comply with the proposal.
- Record-keeping related to the proposed conflict rules.

“Covered technology” includes a firm’s use of analytical, technological, or computational functions, algorithms, models, correlation matrices, or similar methods or processes that optimize for, predict, guide, forecast, or direct investment-

related behaviors of an investor. This would generally apply to the use of a covered technology in a firm's engagement or communication with an investor, including by exercising discretion with respect to an investor's account, providing information to an investor, or soliciting an investor.

136 comments were received with universally negative feedback noting that the changes would harm both investors and the trading markets. Many felt that some of the recent tech innovations have brought a younger and more diverse group of investors into the capital markets and on a path to long-term financial security and generational wealth. The academic community weighed in, challenging the data used to support the proposed legislation. Others suggested that new disclosure would be more appropriate and a less costly approach to address conflicts of interest. Industry participants and trade groups cited the proposal's overly broad scope, existing regulatory protections, and the SEC's lack of statutory authority to make these changes.

5. Volume-Based Exchange Transaction Pricing for NMS Stock

On October 18, 2023, the SEC proposed Rule 6b-1 under the *Securities Exchange Act of 1934* to prohibit NSEs from offering volume-based transaction pricing in connection with the execution of agency-related orders in certain stocks. If exchanges offer such pricing for their members' proprietary orders, the proposal will require the exchanges to adopt rules and written policies and procedures related to compliance with the prohibition, as well as disclose—monthly—certain information, including the total number of members that qualified for each volume tier during the month.

"Currently, the playing field upon which broker-dealers compete is unlevel," said SEC Chair Gary Gensler. "Through volume-based transaction pricing, mid-sized and smaller broker-dealers effectively pay higher fees than larger brokers to trade on most exchanges. We have heard from a number of market participants that volume-based transaction pricing along with related market practices raise concerns about competition in the markets. I am pleased to support this proposal because it will elicit important public feedback on how the Commission can best promote competition amongst equity market participants."

78 letters were received with evenly divided opinions. Those who opposed the changes felt that the outcome would be de facto price setting and inconsistent with the proposed changes to Regulation NMS for tick size. Proponents of the proposal felt the change would improve market competition between exchanges and brokers. Individual investors generally supported the end of volume-based rebate tiers and felt that the SEC also should focus on the broader issue of payment for order flow.

B. 2022 & Earlier Outstanding Proposals

1. Regulation Best Execution

Currently, the SEC does not have a best execution rule; instead, SROs have created their own policies. The Financial Industry Regulatory Authority's (FINRA) best execution rule was last updated in 2014, and the Municipal Securities Rulemaking Board implemented a best execution rule for municipal securities in 2016. To close this regulatory gap, on December 15, 2022, the SEC issued a proposal creating Regulation Best Execution as follows:

- Establish a best execution standard for brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers, collectively "broker-dealers."
- Require broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to comply with the best execution standard.

- Require more robust policies and procedures for broker-dealers that engage in certain conflicted transactions for or with a retail customer.
- Require broker-dealers to review the execution quality of their customer transactions at least quarterly.
- Exempt broker-dealers that qualify as "introducing brokers" from certain requirements if they establish, maintain, and enforce specified policies and procedures.
- Require broker-dealers to review their best execution policies and procedures at least annually and present a report detailing the results of such reviews to their boards of directors or equivalent governing bodies.

In an April 2, 2024 speech, Gensler noted, "I believe a best execution standard is too central to the SEC's mandate to protect investors, not to have on the books as a Commission rule."

More than 2,250 comment letters were received, including four form letters, primarily from individual investors and investor advocacy groups that supported the changes. Asset managers and pension funds with high concentrations of retail activity supported the changes. They cited increased costs due to lack of price discovery from payment-for-order-flow arrangements. Yet, firms like Citadel that pay for order flow vehemently opposed the proposed changes. Industry participants, trade groups, and NYSE and NASDAQ generally supported the need for improvement to the existing "weak" FINRA rule but pushed back on the need for a massive overhaul of the equities market (four proposals) and suggested a sequential approach to market reform with adequate time to study the impacts of each change. Several bond market participants cited potential unintended impacts on their market segment without editing changes to the proposal's scope.

2. Order Competition

The December 14, 2022, proposed rule would enhance competition for the execution of marketable orders of individual investors. The rule would require certain orders of individual investors to be exposed to competition in fair and open auctions before they could be executed internally by any trading center that restricts order-by-order competition.

This proposal received more than 3,600 comment letters, including several form letters. Most market participants felt the proposal as written would not achieve the SEC's intended goals and included significant areas for improvement. A slower approach to the overhaul of the equity market was a key theme.

3. ATSs – Exchange Definition (Rule 3b-16)

On January 26, 2022, the SEC reissued a proposal, first issued in September 2020, to expand and modernize Rule 3b-16, which governs ATSs. ATSs are trading systems for securities that meet the exchange definition under federal securities laws but are not required to register with the SEC as an NSE if the ATS complies with certain exemption conditions. The proposal would make the following updates:

- Expand Regulation ATS for ATSs that trade government securities, NMS stock, and other securities.
- Extend Regulation SCI to ATSs that trade government securities.
- Amend the SEC exchange definition to include communication protocol systems.

The initial proposal generated more than 300 responses. Most agreed with the first bullet point above. There was confusion over the application of Rule 15c2-11 to fixed income securities based on a no-action letter issued on September 24, 2021 and this ATS proposal. Much of the pushback concerned updating the "exchange" definition and a request for a definition of a communication protocol system. Blockchain and decentralized finance groups pushed back on SEC overreach in applying existing concepts to recent technology innovations.

On April 14, 2023, the SEC reopened the comment period. The reopening release reiterated the applicability of existing rules to platforms that trade crypto asset securities, including so-called "DeFi" systems, and provides supplemental information and economic analysis for systems that would be included in the new, proposed exchange definition. The reopening release also requested information and public comment on crypto asset securities trading on such systems and certain aspects of the proposed amendments applicable to all securities.

The SEC received an additional 2,000 comments on the re-exposure. Several comment letters cited the cost for smaller ATSs and a potential reduction in the number of firms.

Resource: Changes for Alternative Trading Systems in 2024?

4. NMS – Consolidated Audit Trail

Issued in August 2020, the proposed amendments would enhance the security of the CAT by making the following changes:

- Define the scope of the current information security program.
- Require the operating committee to establish and maintain a security-focused working group.
- Require the plan processor to create secure analytical workspaces; direct participants to use such workspaces to access and analyze personally identifiable information (PII) and CAT data obtained through the user-defined direct query and bulk extract tools; set forth requirements for the data extraction, security, implementation, and operational controls that will apply to such workspaces; and provide an exception process that will enable participants to use the user-defined direct query and bulk extract tools in other environments.
- Limit the amount of CAT data that can be extracted from the central repository outside of a secure analytical workspace and require the plan processor to implement more stringent monitoring controls on such data.
- Impose requirements related to the reporting of certain PII.
- Define the workflow process that should be applied to govern access to customer and account attributes that will still be reported to the central repository.
- Modify and supplement existing requirements relating to participant policies and procedures on the confidentiality of CAT data.
- Refine the existing requirement that CAT data be used only for regulatory or surveillance purposes.
- Codify existing practices and enhance the security of connectivity to the CAT infrastructure.
- Require the formal cyber incident response plan to incorporate corrective actions and breach notifications.
- Amend reporting requirements relating to firm designated IDs and allocation reports.

The proposal's 28 responses rejected collecting additional PII and questioned the SEC's authority to make such changes.

Conclusion

Forvis Mazars delivers extensive experience and skilled professionals to assist with your objectives. Our proactive approach includes candid and open communication to help address your financial reporting needs. We help broker-dealers, bank holding companies, and others across the capital markets with financial and nonfinancial regulatory reporting. From data origination through report remediation, we help solve clients' complex regulatory reporting challenges. For more information, visit **forvismazars.us**.

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