

MEMO# 35874

October 4, 2024

SEC Adopts Regulation NMS Amendments: Tick Size, Access Fee, and Odd Lot Reforms

[35874]

October 04, 2024

TO: ICI Members

Equity Markets Advisory Committee

ETF (Exchange-Traded Funds) Committee

SEC Rules Committee

Security Valuation Operations Committee SUBJECTS: Trading and Markets RE: SEC Adopts Regulation NMS Amendments: Tick Size, Access Fee, and Odd Lot Reforms

On September 18, 2024, the SEC, in a unanimous vote, adopted amendments to Regulation NMS that would impact the minimum quoted price increments for NMS securities, the access fee caps that registered securities exchanges could charge, and odd lot transparency.[\[1\]](#) These amendments are the second market structure rule change that the SEC has adopted since proposing a significant overhaul of the US equities markets in December 2022.[\[2\]](#) The SEC has yet to act on the arguably more controversial aspects of its market structure overhaul: 1) adoption of an SEC best execution rule;[\[3\]](#) and 2) requiring retail orders to be exposed to auctions.[\[4\]](#)

Collectively, the Regulation NMS amendments will:[\[5\]](#)

- Establish a second minimum pricing increment, also known as tick size, of \$0.005 under Rule 612 of Regulation NMS for the quoting of certain NMS stocks regardless of trading venue. The more controversial aspect of the proposal, related to regulating execution tick size, was not adopted;
- Reduce the access fee caps under Rule 610 of Regulation NMS and require national securities exchanges to make the amounts of all fees and rebates determinable at the time of execution. For protected quotations and other best bids and offers in NMS stocks priced at \$1.00 or more, the access fee cap will be \$0.001 per share.
- Accelerate the date by which market participants must implement the odd-lot information and round lot definitions adopted under the Market Data Infrastructure Rules[\[6\]](#) ("MDI Rules"). Additionally, amendments to Rule 603(b) will require the existing exclusive securities information processors ("exclusive SIPs") to collect, consolidate, and disseminate odd-lot information and will require national securities

exchanges and associations to provide the data necessary to generate odd-lot information to the exclusive SIPs. Finally, the amendments to the definition of odd-lot information under Rule 600(b) will add a new data element that will identify the best odd-lot orders to buy and sell across all national securities exchanges and national securities associations.

Tick Size Reform - Rule 612

Rule 612 under Regulation NMS regulates the prices of quotations and orders and requires that they be reflected in a specified minimum pricing increment—i.e., "tick size." Currently, the minimum pricing increment for quotations and orders of NMS stocks priced at or greater than \$1.00 per share is \$0.01—i.e., penny increment. Originally, the SEC proposed to amend the current one-penny tick size to establish a variable "bucketing" approach that would assign tick size increments to NMS stocks based on a time-weighted average quoted spread. These tick sizes would apply to bids or offers, orders, and indications of interest, as well as executed trades. Further, these tick sizes would apply to all trading, including on exchanges, ATSs, or OTC. The SEC proposed the following "buckets":

- If time-weighted average quoted spread was equal to or less than \$0.008, then the minimum tick size would be \$0.001;
- If time-weighted average quoted spread was greater than \$0.008 but equal to or less than \$0.016, then the minimum tick size would be \$0.002;
- If time-weighted average quoted spread was greater than \$0.016 but equal to or less than \$0.04, then the minimum tick size would be \$0.005; and
- If time-weighted average quoted spread was greater than \$0.04, then the minimum tick size would be \$0.01.

In response, ICI argued in its comment letter that execution tick size reform should not be addressed at this time and quoting tick size reform should be limited to a \$0.005 increment.^[7] In response to comments, the SEC adopted a less burdensome framework more in line with ICI's recommendations. As adopted, the amendments to Rule 612 introduce only one minimum pricing increment, \$0.005, that is less than \$0.01 for quotes and orders priced \$1.00 or more for NMS stocks that have a time-weighted average quoted spread of \$0.015 or less.^[8] There is no minimum pricing increment for executions.

Access Fee Reform - Rule 610

Trading venues can choose to charge an access fee, or pay a rebate, to the participants accessing the venue. Market participants with orders resting at the trading venue (i.e. liquidity providers) often receive rebates. Market participants who submit incoming orders to execute against orders resting at the trading venue (i.e. liquidity takers) are often charged access fees. Within this structure, known as the maker-taker model, the access fees charged are often what is used to fund rebates to liquidity providers.

Rule 610(c) of Regulation NMS currently sets the access fee cap for protected quotations priced at \$1.00 or more at \$0.003 per share. As proposed, the SEC intended to establish a variable access fee structure whereby if the price of a protected quotation or other quotation is \$1.00 or more, fees could not exceed 1) \$0.0005 per share for an NMS stock with a pricing increment of \$0.001, and 2) \$0.001 per share for an NMS stock with a pricing increment greater than \$0.001. Further, exchanges would have been prohibited from imposing fees or providing rebates (or other form of remuneration) for the execution of an order in an NMS stock unless the fee or rebate could be determined at the time of execution.

In response, ICI stated in its comment letter its support for a reduction in the \$0.003 access fee cap, but recommended any reduction correspond accordingly to any finalized reduction to the quoting tick increment and noted the diversity of views that ICI members had on this issue. We further encouraged the SEC to continue analyzing the effect of rebates funded by exchange access fees, and based on that analysis, to consider whether the cap should be further reduced and applied more broadly to more stocks to address such effects. Finally, ICI expressed its support for the proposed requirement that exchange fees or rebates (or other forms of remuneration) be known at the time of execution of an order.

In response to comments, the SEC is adopting only the proposed \$0.001 per share access fee cap for all protected quotations priced \$1.00 or more. Further, the SEC adopted the proposed requirement that all exchange fees charged, and rebates paid, for the execution of an order in an NMS stock be determinable at the time of execution.

Odd Lot Reform

In 2020, the SEC adopted the MDI Rules to expand the content of core market data that is made available to market participants and adopt a new model for collection, consolidation and dissemination of consolidated market data. Despite being adopted, the MDI Rules have not yet been implemented and have continually been delayed. As proposed, the Regulation NMS amendments for this rulemaking would accelerate the implementation of certain provisions of the already adopted MDI Rules as well as include dissemination of some of the data impacted by the MDI Rules. ICI supported this part of the proposal in its comment letter. As part of the adopting release, the accelerated implementation of certain provisions of the MDI Rules and accompanying dissemination measures were adopted as proposed.

The accelerated MDI Rules include (i) a new definition of "round lot" to deem smaller share orders in higher priced stocks to be round lots, rather than fixed at 100 shares and (ii) the addition of information about odd-lot executions and better than national best bid and offer-priced odd-lot orders to the category of core market data that must be made widely available by national securities exchanges via the consolidated tape.

Compliance Dates

The tick size reform, access fee reform, and definition of "round lot" has a compliance date of the first business day of November 2025. The dissemination of best odd-lot orders has a compliance date of the first business day of May 2026.

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Notes

[1] Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, Exchange Act Release No. 101070 (Sept. 18, 2024), available at <https://www.sec.gov/files/rules/final/2024/34-101070.pdf>.

[2] In March 2024, the SEC adopted changes to Rule 605 under Regulation NMS to enhance disclosure of order execution information. Disclosure of Order Execution Information, Exchange Act Release No. 99679, 89 Fed. Reg. 26428 (April 15, 2024).

[3] Regulation Best Execution, Exchange Act Release No. 96496, 88 Fed. Reg. 5440 (Jan.

27, 2023).

[4] Order Competition Rule, Exchange Act Release No. 96495, 88 Fed. Reg. 128 (Jan. 3, 2023).

[5] For the purposes of this memo, we are only discussing impacts on NMS stocks that trade at prices of \$1.00 per share or more. There were separate proposed and adopted tick size and access fee reforms for NMS stocks that trade at prices below \$1.00 per share.

[6] Market Data Infrastructure, Exchange Act Release No. 90610, 86 Fed. Reg. 18596 (Apr. 9, 2021).

[7] Letter from Sarah A. Bessin, Deputy General Counsel, and Nhan Nguyen, Assistant General Counsel, ICI, to Vanessa A. Countryman, Secretary, SEC (March 31, 2023), available at <https://www.sec.gov/comments/s7-30-22/s73022-20162791-332193.pdf>.

[8] The determination of the tick size will be calculated by the stock's primary listing exchange, adjusting (i) in May, based on the time-weighted average quoted spread between the prior January and March, and (ii) in November, based on the time-weighted average quoted spread during the prior July through September. The "time-weighted average quoted spread" would be the average dollar value difference between the national best bid and the national best offer during regular trading hours where each instance of a unique national best bid and a unique national best offer is weighted by the length of time that the quote prevailed as the national best bid or national best offer.