



441 G St. N.W.  
Washington, DC 20548

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October 23, 2024

The Honorable Sherrod Brown  
Chairman  
The Honorable Tim Scott  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Patrick McHenry  
Chairman  
The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Securities and Exchange Commission: Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC) entitled “Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders” (RIN: 3235-AN23). We received the rule on September 25, 2024. It was published in the *Federal Register* on October 8, 2024. 89 Fed. Reg. 81620. The effective date of the rule is December 9, 2024.

According to SEC, it is adopting amendments to certain rules of Regulation National Market System (Regulation NMS) under the Securities Exchange Act of 1934, as amended, to amend the minimum pricing increments for the quoting of certain NMS stocks, reduce the access fee caps, and enhance the transparency of better priced orders. SEC stated that it is taking this action to fulfill Congress’s directive to facilitate the establishment of a national market system and advance the objectives of investor protection and the maintenance of fair and orderly markets.

Enclosed is our assessment of SEC’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
SECURITIES AND EXCHANGE COMMISSION  
ENTITLED  
“REGULATION NMS: MINIMUM PRICING INCREMENTS, ACCESS FEES,  
AND TRANSPARENCY OF BETTER PRICED ORDERS”  
(RIN: 3235-AN23)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) conducted an economic analysis for this rule. The analysis included discussion of (1) broad economic considerations pertaining to liquidity and spread, the economics of minimum pricing increments, and the economics of access fees; (2) a baseline addressing affected entities and markets; (3) benefits, costs, and other economic effects; (4) effects on efficiency, competition, and capital formation; and (5) reasonable alternatives considered. See 89 Fed. Reg. 81682–81768.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

SEC prepared a Final Regulatory Flexibility Analysis. SEC certified that the final amendments to Rules 600, 603(b) and 610 would not have a significant economic impact on a substantial number of small entities. See 89 Fed. Reg. 81771–72.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, SEC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory

Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, SEC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On December 29, 2022, SEC published a proposed rule. 87 Fed. Reg. 80266. SEC received comments from a variety of market participants. See 89 Fed. Reg. 81626. SEC responded to comments in this rule. *Id.* at 81626–29.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

SEC determined that this rule contains information collection requirements under the Act. See 89 Fed. Reg. at 81768.

Statutory authorization for the rule

SEC promulgated this rule pursuant to sections 78b, 78c, 78e, 78f, 78k, 78k-1, 78o, 78o-3, 78q, 78s, 78w(a), and 78mm of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, SEC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, SEC is not subject to the Order.