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## SEC Proposes Significant Equity-Market Reforms - December 16, 2022

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On Wednesday, the SEC published for comment over 1600 pages of new rule proposals focused on significant reforms to the nation's equity securities markets, marking the most significant regulatory reforms of the equity markets since Regulation NMS was proposed in March 2004. These proposals are currently out for comment until most likely the end of the first quarter of 2023 or **March 31, 2023**, depending on the publication date of these initiatives in the Federal Register.

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### BACKGROUND

In recognition that well-functioning securities markets are in the national interest, Congress directed the SEC in 1975 "to facilitate the establishment of a national market system to link together the multiple individual markets that trade securities" [ 70 F.R. 37496 (June 29, 2005) at 37497]. Adopted in 2005, Regulation NMS coalesced this authority to implement a comprehensive national market system for securities generally by adopting an order-protection rule (Rule 611), an access rule (Rule 610), and a sub-penny pricing rule (Rule 612), as well as by reorganizing and enhancing existing and new market-data rules.

This week's rulemaking initiatives propose rules under new Regulation Best Execution, new Rule 615 (order-competition rule), and amendments to existing rules under Regulation NMS (Rules 600, 603, 610, and 612).

Because of the magnitude of the SEC's proposal, we will be analyzing and publishing pieces in the coming weeks, inasmuch as the impact of these proposals, if adopted, will not only affect market participants directly subject to the rule proposals (brokers and dealers in equity securities), but those potentially indirectly affected (institutional traders and proprietary trading firms) by trading through and with sell-side firms. Highlights of the SEC's significant rulemaking efforts are as follows:

**Regulation Best Execution:** Proposed Regulation Best Execution represents the first attempt by the SEC at codifying bedrock industry principles of best execution. The SEC previously applied best execution as a measurement of various qualitative and quantitative factors applied prudentially across different fact patterns. Namely, best execution principles traditionally consider price, order size, efficiency and speed of execution, trading characteristics of the security, as well as the potential for price improvement and other qualitative factors based on the particulars of each trade.

New Regulation Best Execution would establish a uniform standard and require sell-side firms to have detailed policies and procedures addressing: (1) methods of compliance, including how a firm expects to identify material potential liquidity sources, incorporate material potential liquidity sources into its order handling practices, and ensure that the firm can efficiently access each liquidity source; (2) the accessibility of timely pricing information and opportunities for price improvement; (3) conflicts of interest in the retail market; and (4) periodic reviews of execution quality and procedures.

**Obtain the proposing release for Regulation Best Execution [HERE](#)**

**Order-Competition Rule:** Proposed new Rule 615 would require that certain orders of individual investors be exposed to competition in fair and open auctions, before they could be executed internally by trading centers that restrict order-by-order competition.

**Obtain the proposing release for new Rule 615 [HERE](#)**

**Amendments to Existing Rules:** To update current rules under Regulation NMS, the SEC proposed to amend regulations governing pricing increments for quoting and trading in NMS stocks, access to fee caps for protected quotations, and the acceleration of transparency of best-priced market orders.

**Obtain the proposing release to amend existing rules under Regulation NMS [HERE](#)**

**Market Data:** Proposed amendments to Rule 605 and related definitional provisions under Regulation NMS would expand those subject to reporting order execution information and would seek to capture “after-hour” trades. **Obtain the proposing release to amend existing Rule 605 under Regulation NMS [HERE](#)**

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These latest rule initiatives mark the 31st, 32nd, 33rd, and 34th rule proposals, not including re-proposals, of the Gensler Commission in what can be aptly described as an activist year.

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