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SIFMA Requests Comment Extension on SEC's Equity Market Reforms; Calls for Release of Data

SIFMA requested an extension of the comment period for four rule proposals targeting equity market reform. SIFMA's comment letter concerns proposals on (i) a best execution regulatory framework, (ii) variable minimum pricing increments for quoting and trading NMS stocks, (iii) enhanced order competition and (iv) disclosure requirements regarding order execution information. SIFMA also submitted a FOIA request calling on the SEC to supply certain data relied upon and referenced in the proposed rulemakings.

Rule Proposals

As previously covered, in December 2022, the SEC issued four rule proposals aimed at reforming the structure of U.S. capital markets:

1. "Regulation Best Execution" (i) providing a best execution regulatory framework for broker-dealers, government securities broker-dealers and municipal securities dealers, and (ii) enforcing written policies and procedures designed to comply with the best execution standard;
2. amendments to Regulation NMS adopting minimum pricing increments (i.e., "tick sizes") for the quoting and trading of NMS stocks;
3. new Regulation NMS Rule 615 (the "Order Competition Rule") establishing regulations to "promote a more competitive, transparent, and efficient market structure for NMS stocks"; and
4. amendments to Regulation NMS Rule 605 ("Disclosure of Order Execution Information") updating the disclosures required for order executions in NMS stocks.

The comments for each proposal are due by March 31, 2023.

FOIA Request

SIFMA submitted to the SEC a FOIA request concerning the following two types of data referenced in the proposals: (i) certain subsets of Consolidated Audit Trail ("CAT") data not publicly available and (ii) publicly available data where the precise source of the data is unclear. SIFMA stated that the use of non-public CAT data in rule proposals is "highly problematic" because the public is then unable to evaluate and "meaningfully comment" on SEC economic analyses and conclusions. SIFMA stated, however, that unattributable CAT data used could help "facilitate the public's review and validation of the [SEC's] economic analyses."

Extension Request

SIFMA requested the comment period be extended to at least 90 days following the SEC's release of the data as requested in the FOIA request. SIFMA stated an extension is appropriate due to the public's inability to fully evaluate the "purported costs, benefits, effects, and economic baselines" of the proposals because of its reliance on undisclosed CAT data. SIFMA added that an extension is also in order in light of the proposals' "breadth and depth of the [] impact on today's markets and market participants" and the lack of analysis as to the collective impact of the rulemakings.

Commentary

From a policy standpoint, the SEC should provide the requested information for transparency and public comment purposes. The SEC may face difficulty in presenting a convincing cost-benefit analysis, however, due to the complexity of the proposals and the assumed costs and benefits.

Hanging out there is a potential legal challenge to these proposals under the Administrative Procedures Act. The requested data would play a crucial role in such a challenge.

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February 9 2023

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