

Regulatory Alert

Regulatory Insights for Financial Services

October 2023

Volume-based Transaction Pricing: SEC Proposed Rule

Regulatory Insights:

- SEC proposal seeks to address competition and transparency concerns related to volume-based transaction pricing by national securities exchanges.
- Proposal focuses on agency and riskless principal orders, with implications for member competition and customer conflict of interest.
- Proposed compliance and enforcement mechanisms to deter “evasive” practices and promote compliance.

The Securities and Exchange Commission (SEC) issues a new [proposed rule](#) (Rule 6b-1) aimed at addressing concerns surrounding volume-based exchange transaction pricing schedules. The proposed rule is intended to promote fair competition, mitigate conflicts of interest, and increase exchange transparency. It consists of the following three components:

- A prohibition on volume-based exchange transaction pricing in connection with the execution of agency or riskless principal orders in NMS stocks (“agency-related volume”). *Note:* The proposed rule would not prohibit exchanges from offering volume-based exchange transaction pricing for member proprietary volume where the member is trading solely for its own account and not in connection with filling an order for a customer.
- A requirement that exchanges adopt rules, policies, and procedures to detect, deter, and facilitate compliance with the proposed agency-related volume prohibition (“anti-evasion mechanisms”).
- A requirement that exchanges disclose (in structured data format) on a monthly basis their volume-based transaction pricing tiers and the number of members that qualify for each.

The proposed rule and its components are outlined below.

Application and Scope. The proposed rule would apply to all national securities exchanges, with specific requirements for exchanges that offer volume-based exchange transaction pricing for member proprietary volume.

Prohibition on Volume-Based Transaction Pricing for Agency-Related Volume. Proposed Rule 6b-1(a) would prohibit exchanges from offering volume-based transaction pricing in connection with the execution of agency-related volume, including any volume-based transaction fees, rebates, or other incentives.

Anti-Evasion Mechanisms. The proposed rule would require exchanges to have the following anti-evasion measures:

- Proposed Rule 6b-1(b)(1) would require exchanges to adopt rules requiring members’ practices to facilitate the exchanges’ ability to comply with the proposed prohibition.
- Proposed Rule 6b-1(b)(2) would require exchanges to establish, maintain, and enforce written policies and procedures designed to detect and deter members from inappropriately receiving volume-

based transaction pricing on any agency-related volume.

Disclosures on Volume-based Transaction Pricing.

Proposed Rule 6b-1(c) would require exchanges offering volume-based transaction pricing for member proprietary volume to electronically submit information to the SEC within five (5) calendar days after the end of each calendar month. The data would be required to be in electronic, machine-readable structured data tables, and would include:

- The number of members that executed proprietary orders in NMS stocks for the member's account on the exchange during the month.
- For each volume-based transaction fee, rebate, and other incentive, a summary table that includes:

- The "base" fee and rebate.
- Volume-based transaction pricing tiers.
- The amount of the fee, rebate or other incentive for each pricing tier.
- An explanation of each tier's requirements.
- The total number of members that qualify for each volume-based transaction pricing tiers.

Comment Period. SEC is seeking public comments on all of the components of the proposed rule, as well as specific questions related to each. The deadline for comment submission is sixty (60) days after the date of publication in the Federal Register.

For more information, please contact [Mike Sullivan](#) or [Stefan Cooper](#).

Contact the author:



Amy Matsuo
Principal and National Leader
Regulatory Insights
amatsuo@kpmg.com

kpmg.com/socialme



Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

All information provided here is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the facts of the particular situation. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.