Select Vantage

December 20, 2023

Via SEC Internet Comment Form

Office of Market Supervision
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Sirs and Mesdames,

Re: S7-18-23 - Proposed Rule for Volume-Based Exchange Transaction Pricing for NMS Stock (the "Proposed Rule")

Thank you for this opportunity to comment on the Proposed Rule.

Who We Are

Select Vantage Inc. is a proprietary (non-dealer) trading firm that has contributed market-making liquidity to U.S. stock markets since 2012. We have broad experience trading both liquid and less-liquid names on various lit markets and in dark pools. Our business model scales the judgment of individual human traders globally across shared market-access, data, execution, compliance and surveillance infrastructure.

In 2022, we traded over 15.4 billion Reg NMS stocks (or approximately 61 million per day) over more than 40 exchanges and other venues. Given the volumes we trade, the Proposed Rule will have a significant economic impact on our trading (and those of similar non-member prop firms), which we wish to address below.

Our View on the Proposed Rule

Dealer-member's proprietary order flow will be exempted from the Proposed Rule's prohibition on volume-tiered pricing. **There is no policy reason not to extend the same exemption to institutional customers that make their own routing decisions** (which includes many non-dealer prop firms, buy-side firms, and family offices).

A key premise in the Proposed Rule behind this exemption for proprietary order flow is that a member's decision in routing its own order flow does not have the same "...potential for a conflict of interest between members and customers with respect to routing. Because the member trades for its own account when routing in a principal capacity, only its own interests are at stake in the routing decisions." [page 153, Proposed Rule]

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By contrast, the Commission believes that member firms may have an incentive to route a customer order to a particular exchange in order to capture a volume-based pricing tier for that member in circumstances where the client does not benefit. Accordingly, the Proposed Rule "...would eliminate [this] one incentive - reaching a volume tier - for a member to route a customer order to a particular exchange when doing so might not be in the customer's interest." [pages 29-30, Proposed Rule]

What is missing in the above characterizations is that many institutional customers, such as Select Vantage, direct our own orders to exchanges at our traders' (and not our dealer's) own choosing. In other words, our directed orders must be sent to the relevant exchange without any discretion on the part of the dealer to direct them elsewhere. Therefore no conflict exists.

Unintended Consequence of Proposed Rule for Institutional Trading

Moreover, for those institutional customers that operate as we do, exchange fees are a critical cost component of our overall trading strategies. Our executing dealer does not simply "absorb" all of these costs regardless of where we trade - a material component is passed on to us and, correspondingly, we enjoy the benefits of lower volume-based exchange pricing. The extent to which institutional customers directly bear exchange costs will vary broker to broker and customer to customer, but based on our knowledge of other similarly situated institutional customers, we believe that a significant constituency of institutional customers will be adversely affected by the Proposed Rule.

In our case, significantly more than half of our U.S. stock trading involves passive orders that contribute to price discovery. If we lose the commercial benefit we have been enjoying to date of volume-based pricing tiers, our overall trading volumes will decrease. That is, our traders will widen their quoted spreads in order to continue to profitably trade and this, in turn, will result in diminished market liquidity on the less liquid stocks that we specialize in trading.

Cost-Effective Compliance Implementation

To the extent Rule 6b-1(b)(2) contemplates means by which dealers will segregate or otherwise track proprietary versus agency order flow (see in particular footnotes 50 and 51 to the Proposed Rule), it can likewise do so for those "institutional customers"[1] whose orders are not directed at the discretion of the member firm. For example, if a dealer segregates its order flow via two ports into a particular exchange, one can be configured for both proprietary and qualifying institutional customer flow, and the other for retail order flow.

In order for institutional customers to continue to avail themselves of volume-tiered pricing that they currently enjoy, their member firms could simply obtain an annual statement from each such institutional customer to the effect that it intends to continue to send all or substantially all of its order flow as "directed orders" to exchanges.

[1] FINRA member firms already categorize customers as either "institutional" or "retail" and so no new categorization methodology needs to be adopted.

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Conclusion

As there is no policy reason to differentiate institutional customer directed order flow from dealer proprietary order flow, exempting both from the Proposed Rule in the foregoing manner would be:

(i) fair,

(ii) impose no new compliance costs (beyond those in the Proposed Rule), and

(ii) involve the least disruption to existing exchange-trading economics.

Sincerely,

M. Josipovic

Mario Josipovic
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