

October 13, 2023

Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: **File No. S7-29-22 – Disclosure of Order Execution Information; File No. S7-30-22 - Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders**

Dear Ms. Countryman:

Investors Exchange LLC (“IEX”) is submitting as comments to the above-referenced rule proposals the attached opinion piece by IEX dated October 12, 2023 entitled “Repaving Highway 605: Better Investor Disclosure Does not Mean Stalling Further Reform”. The attached explains why implementing changes to Regulation NMS Rule 605 should not be viewed as a precondition to the Commission’s consideration and adoption of changes to other rules governing equity markets.

Sincerely,



John Ramsay  
Chief Market Policy Officer, IEX

# Repaving Highway 605: Better Investor Disclosure Does Not Mean Stalling Further Reform

**JOHN RAMSAY**

Chief Market Policy Officer

**Rule 605 is one of many market structure rules long overdue for a refresh to better serve investors with improved transparency around execution quality on different trading venues. But the need to update the investor disclosure regime should not be used as an excuse to slow roll the adoption of other needed market reforms.**

During the current debate on equity market reform, some commenters have stated or implied that changes to the investor disclosures required by SEC Rule 605 should be a prerequisite to the Commission determining whether to adopt any other reforms, or which reforms to adopt. Even the most basic critical analysis reveals that this premise makes no sense. This becomes clear when one considers (i) why Rule 605 exists and how reports from Rule 605 are used, (ii) the data and analysis that is available to support regulatory reform; and (iii) the substantial evidence and support, inside and outside the industry, to modernize key aspects of the equity market rule set.

## **Background**

Rule 605, adopted in 2000, is fundamentally about giving better information to investors about how their orders are routed, by requiring market centers to publish monthly reports of data relevant to their quality of executions. The rule was adopted in tandem with Rule 606, which requires broker-dealers to disclose specified information about how they route certain customer orders. Together, those rules were aimed at addressing concerns about “market fragmentation.” Responding to a large increase in the number of competing markets where investors’ orders could be sent, the SEC acted to give investors more information to evaluate how their orders were being handled in this more complex ecosystem.<sup>1</sup>

The Commission adopted substantial changes to Rule 606 five years ago, but Rule 605 has been mostly untouched since it was adopted. Market participants have long called for changes to the rule to better reflect how equity orders are traded today, so as to better achieve the purpose of giving investors more accurate and useful information. The SEC’s proposed changes to Rule 605 would achieve this purpose, by requiring markets to provide updated metrics on order handling and extending the reporting requirement to broker-dealers with large numbers of customer accounts.<sup>2</sup>

The SEC adopted other elements of Regulation NMS in 2005, five years later. Those other rules went well beyond the purpose of giving better information to investors: Instead, they sought to address market fragmentation and other concerns about evolving equity markets by establishing a system to honor the best-displayed “protected quotes” by exchanges, creating a minimum tick size, and setting limits on fees to access the new protected quotes, among other requirements.<sup>3</sup>

As part of its recent equity market reform proposals, the Commission included various changes to this Reg NMS rule set, to reflect the many and profound ways that equity markets have evolved in the intervening years.<sup>4</sup>

### **Other Sources of Data and Analysis**

There are myriad sources of information that both regulators and market participants draw on to consider how orders are handled and how markets compete with and compare to each other. To name just a few:

- Exchanges regularly publish a wealth of information about orders and executions (e.g., New York Stock Exchange Trade and Quote Data, which contains comprehensive cross-market information).
- Other exchange proprietary and consolidated market data provides additional information on both orders and executions.
- FINRA publishes regular reports containing detailed information on off-exchange trading. Independent vendors and other private sector sources publish detailed analyses leveraging public data sources and other aggregated information that they are able to obtain directly from market participants.
- The SEC now has available through the Consolidated Audit Trail order-by-order and transaction information that is substantially more detailed than what was available before.

Data from Rule 605 reports can also be used as one source among many to evaluate market quality and how markets compete with each other. But again, the central purpose for those reports is to provide information that investors can use to evaluate how orders are handled. The focus of the SEC’s other market reform proposals is how to make the markets function more efficiently overall. The focus of changes to Rule 605 is to give investors better information on how individual markets compare to each other, given the other rules and market conditions that affect them.

### **The Case for Moving Forward**

As we have detailed extensively before, there is ample evidence and data showing the need to update the rules governing the equity markets.<sup>5</sup> There is also a substantial consensus in favor of updating those rules in key respects and a long history of support, within and outside the industry, to do so. There is room for reasonable debate about the shape of that reform. Changes to Rule 605, on their own, would help investors get better information about how their orders are handled under the current regime. But, at least until very recently, no one has suggested that revising Rule 605, and looking at those results for some indeterminate period of time, should be a prerequisite to making other changes.

Here are some key examples of topics where the case for reform is already quite clear.

### ***Minimum Tick Increments***

There is ample evidence that the use of a single one cent “tick increment” requirement has caused a very large portion (more than half) of trading volume to become “tick-constrained,” meaning participants would readily quote at narrower increments if given the ability to do so. There is also plenty of evidence that this has led to pricing distortions through the use of fees and rebates that enable some participants to avoid the one-cent tick constraint but at the cost of transparency and market efficiency.

There is overwhelming support to reduce the tick size by some amount to address these problems – the debate is over how much and for which stocks. IEX and many other commenters have urged the SEC to limit the tick size reduction to one-half cent. There is a general consensus in favor of taking that step.<sup>6</sup> People can reasonably debate how to determine which stocks would most benefit from this change, but there is voluminous data about quoted, realized and effective spreads, and other relevant data, to be able to make a reasoned judgment on that question. Better data from Rule 605 reports, among other sources, could be useful in making additional decisions about tick size in the future. But it is certainly not needed to decide whether to make changes to the tick size now.

### ***Exchange Access Fees***

There is also a mountain of evidence supporting a reduction in the access fee cap from the current levels, as we and others have previously detailed. There is clear evidence that the 30-mil “limit” has acted to keep access fees artificially high, leading to pricing distortions and increasing costs to institutional investors in particular. There is a general consensus in favor of reducing the cap. The debate centers on how much and whether to reduce the cap for only some stocks or instead for all stocks, as IEX and many other commenters, including dozens of institutional investors, have urged.<sup>7</sup> That debate has gone on for many years, and the Commission has the evidence and the benefit of comment to be able to make a reasoned judgment. The improvements to Rule 605 could help investors evaluate how their orders are handled when access fees are no longer pegged to an outdated standard. But it makes no sense to say that changing the cap should depend on what new Rule 605 reports may tell us about order routing that is still affected by the old standard.

### ***Minimum Trading Increment***

It is well-established, based on years of experience and data, that execution decisions are influenced by the fact exchanges and alternative trading systems, because of the one cent tick requirement, can only execute trades in very limited price increments. Other market centers do not face that restriction. This creates a structural imbalance between types of market venues in competing for orders. There is substantial support for establishing a minimum trading increment, at \$0.001 per share, including support across exchanges, market makers, and retail brokers.<sup>8</sup>

Others disagree, but the fact that there are differing views does not mean that the Commission lacks the basis for making a reasoned judgment. If the Commission decides to establish a minimum increment, investors can use Rule 605 reports and other sources to compare executions across markets, once this competitive disparity is addressed.

## **Conclusion**

Rule 605 is one of many rules that is long overdue for a refresh, so that investors can have more relevant information in making informed decisions. But the premise that Rule 605 updates must be a precondition to any other changes looks more like a calculated stall than an argument for careful, reasoned decision making. Regulation NMS is 18 years old, and the markets are worlds different than in 2005. The Commission has all the information it needs to move forward.

<sup>1</sup>See *Securities Exchange Act Release No. 43590, 65 FR 75414 (December 1, 2000)*, <https://www.govinfo.gov/content/pkg/FR-2000-12-01/pdf/00-30131.pdf>.

<sup>2</sup>See *Securities Exchange Act Release No. 96493, 88 FR 3786 (January 20, 2023)*, <https://www.govinfo.gov/content/pkg/FR-2023-01-20/pdf/2022-27614.pdf>.

<sup>3</sup>See *Securities Exchange Act Release No. 58108, 70 FR 37496 (June 29, 2005)*, <https://www.govinfo.gov/content/pkg/FR-2005-06-29/pdf/05-11802.pdf>.

<sup>4</sup>See *Securities Exchange Act Release No. 96494, 87 FR 80266 (December 29, 2022)*, <https://www.govinfo.gov/content/pkg/FR-2022-12-29/pdf/2022-27616.pdf>.

<sup>5</sup>Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Secretary, SEC, dated March 20, 2023, <https://www.sec.gov/comments/s7-30-22/s73022-20160364-328968.pdf>.

<sup>6</sup>See IEX, “The Comment Letters Are In. Here’s What They Actually Say” (April 20, 2023), <https://www.iex.io/article/the-comment-letters-are-in-heres-what-they-actually-say>.

<sup>7</sup>See IEX, “The Comment Letters Are In. Here’s What They Actually Say” (April 20, 2023), <https://www.iex.io/article/the-comment-letters-are-in-heres-what-they-actually-say>.

<sup>8</sup>See, e.g., Letter from NYSE Group, Inc., Charles Schwab & Co., and Citadel Securities, dated March 6, 2023, <https://www.sec.gov/comments/s7-30-22/s73022-20158675-326601.pdf>.