



441 G St. N.W.
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B-330804

March 5, 2019

The Honorable Mike Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Transaction Fee Pilot for NMS Stocks*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission) entitled “Transaction Fee Pilot for NMS Stocks” (RIN: 3235-0761). We received the rule on December 21, 2018. It was published in the *Federal Register* as a final rule on February 20, 2019. 84 Fed. Reg. 5202. The effective date of the final rule is April 22, 2019, through December 29, 2023.

The final rule conducts a Transaction Fee Pilot for National Market System stocks to study the effects that exchange transaction fee-and-rebate pricing models may have on order routing behavior, execution quality, and market quality. The Commission expects the data generated by the pilot, combined with data from existing sources, will facilitate an empirical evaluation of whether the existing exchange transaction-based fee and rebate structure is operating effectively to further statutory goals.

The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The Senate received the final rule on January 9, 2019. 165 Cong. Rec. S101 (daily ed. January, 9, 2019). The *Congressional Record* does not reflect the date of receipt by the House of Representatives. It was published in the *Federal Register* on February 20, 2019, and has a stated effective date of April 22, 2019. 84 Fed. Reg. 5202. If the House of

Representatives did not also receive the rule prior to publication in the *Federal Register*, the final rule does not have the required 60-day delay in effective date.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact me at (202) 512-8156.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Brent J. Fields
Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
“TRANSACTION FEE PILOT FOR NMS STOCKS”
(RIN: 3235-0761)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) stated the final rule will impose costs on exchanges to comply with the pilot study’s requirements to collect, calculate, and publicly post data required by the pilot on their websites, transmit the order routing datasets to the Commission, as well as to implement the fee changes, if required in order to comply with the pilot study’s restrictions. The Commission estimated that aggregate costs across all listing exchanges would be \$6,495,000 in implementation and periodic update costs for a 2-year pilot study. The Commission further estimated that if the pilot study was reduced to 1 year the cost would be \$4,642,000. The Commission stated other costs may also arise such as a decline in the margin between fees and rebates, a decline in overall trading volume on an exchange, temporary increases in brokerage commissions charged to customers, and a decrease in liquidity.

The Commission stated the primary benefit of the final rule would be to inform the Commission and public of the economic impact of exchange transaction-based fees and rebates. As a result of the pilot study, the Commission stated it will have data to better inform its regulatory consideration of exchange transaction-based fee-and-rebate pricing models and fee changes, and the potential effects of changes to its regulatory approach concerning the same.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Commission certified that the final rule will not have a significant economic impact on a substantial number of small entities for purposes of RFA.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551*et seq.*

The Commission stated it published a notice of proposed rulemaking in the *Federal Register* on March 26, 2018. 83 Fed. Reg. 13,008. The Commission further stated it received a number of comment letters from a diverse group of commenters including exchanges, investment managers, broker-dealers, and other market participants, as well as academics, listed issuers, analytics firms, market observers, and industry associations.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Commission stated the final rule did contain a collection of information governed by PRA and solicited comment on the collection in the proposed rule. The Commission also applied for a control number from the Office of Management and Budget. The Commission stated the collection would impose an aggregate one-time burden of 222 hours per exchange and an aggregate annual burden of 314 hours per exchange.

Statutory authorization for the rule

The Commission stated it promulgated the rule under 15 U.S.C. §§ 78c, 78e, 78f, 78k-1, 78o, 78q, and 78w(a).

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.