



PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

1300 McGee Drive, Suite 112 | Norman, OK 73072

Toll Free (888) 621-7484 | Fax (405) 360-2063

www.piaba.org

March 29, 2023

Via Email Only @ rule-comments@sec.gov

Ms. Vanessa Countryman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

**Re: SEC S7-32-22
Proposed Rule – Regulation Best Execution**

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate Bar Association (“PIABA”), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Securities and Exchange Commission (“SEC”) and Financial Industry Regulatory Authority (“FINRA”) relating to both investor protection and disclosure.

The SEC is proposing to enact Regulation Best Execution. While the NASD (FINRA’s predecessor) created a best execution rule back in 1968, this is apparently the first rule of its kind proposed by the SEC, according to the SEC press release regarding this rule proposal. However, a lot has changed between 1968 and now. Trading volume has grown exponentially over the last few decades. As an example, U.S. Census Bureau data shows that: 1970 saw approximately 3.1 billion shares traded on the NYSE; 27.7 billion shares were traded in 1985; and, approximately 601 billion shares were traded in 2010¹. As online discount brokerage firms like RobinHood have entered the market, we presume the trading volume has continued to increase. Simply put, the

¹. *See* Volume of Trading on New York Stock Exchange, U.S. Census Bureau, available at <https://www2.census.gov/library/publications/2011/compendia/statab/131ed/tables/12s1210.xls> (last visited Mar 10, 2023).

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ever-increasing use of the financial markets by individual retail investors requires the SEC to enact regulations that protect those retail investors.

There are notable recent cases of firms failing to provide proper execution for customer trades, such as *Robinhood Financial*, Admin. Proc. 3-20171, SEC Release No. 10906 (Dec. 17, 2020)(the firm failed to disclose it sought and received the best compensation for routing order flow, and clients did not receive best execution from those paying Robinhood for the order flow); and *Kahn Brothers Advisors*, Admin. Proc. 3-20880, SEC Release No. 95045 (June 6, 2022)(the investment advisory firm performed no tests to confirm its clients were receiving best execution as it exclusively used its affiliated broker/dealer to clear trades) These sorts of cases demonstrate the need for rules governing execution.

PIABA generally supports the proposal. In particular, PIABA hopes that the rules can provide uniformity to the securities brokerage industry and put investors, big and small, on an equal footing with one other. Uniformity will also bring clarity to all parties involved, including the industry participants and investors.

PIABA also asks that the Regulation Best Execution conform with the spirit of Regulation Best Interest, which was put into effect on June 30, 2020. In particular, PIABA is concerned about any potential conflicts of interest in execution. Regulation Best Interest seeks to mitigate those conflicts and PIABA hopes that Regulation Best Execution would also mitigate any conflicts as much as it practically can.

PIABA agrees with the Commission's proposal to require broker-dealers' best execution policies and procedures to address additional considerations with respect to "conflicted transactions," such as affiliate transactions, principal transactions or transactions for which the broker-dealer has received payments for order flow. PIABA believes this part of the proposal, which goes beyond the existing requirements of FINRA and MSRB's best execution rules, is a crucial addition to the best execution standard. PIABA further supports requiring broker-dealers to document their compliance with the best execution standard for conflicted transactions and agrees with the Commission that this would "assist broker-dealers in complying with proposed Regulation Best Execution and regulators in overseeing broker-dealers' compliance."²


PIABA looks forward to seeing how these efforts by the Commission to ensure broker-dealers appropriately manage any conflicts of interest they have in trade execution work to ensure retail investors actually receive best execution on their securities trades. Obviously, an investor's rational fear they are not receiving best execution as regulators and brokers say they are entitled to works to weaken confidence in the American securities exchanges and markets. PIABA therefore urges the Commission to continue its efforts to engage in additional focused rule-making as it seeks to fulfill its mandate to protect investors and ensure confidence in the American capital markets.

² SEC Regulation Best Execution, 88 Fed. Reg. 5440, 5468 (Jan. 27, 2023).

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PIABA thanks the Commission for the opportunity to comment on this proposal.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "H. Berkson". The signature is fluid and cursive, with a large initial "H" and a long, sweeping tail.

Hugh D. Berkson
President, Public Investors Arbitration Bar
Association