AN INTERVIEW WITH **BRETT REDFEARN** OF THE SEC

Brett Redfearn, director of the Division of Trading and Markets at the U.S. Securities and Exchange Commission, recently shared some of his views on issues affecting investor relations officers and public companies.

BY NICOLE NOUTSIOS

Brett Redfearn is director of the Division of Trading and Markets at the U.S. Securities and Exchange Commission. He joined the SEC in 2017 from J.P. Morgan, where he was global head of market structure for the corporate and investment bank.

Redfearn has a long history in the U.S. equity markets, having worked with investors, exchanges, and broker-dealers. During his career, he has focused on how technology, regulation, and business trends are changing trading patterns across asset classes and geographic regions.

He has helped build electronic trading products, worked closely with exchanges and other trading venues as these products evolved, and engaged with global asset managers on major regulatory developments. He has also been a frequent contributor at policy forums surrounding U.S. equity markets, and he has been an active participant at several meetings of the SEC Equity Market Structure Advisory Committee.

IR Update recently interviewed Redfearn about several topics affecting investor relations. He prefaced his comments by noting that his responses reflect his views and do not necessarily reflect those of the Commission, the commissioners, or other members of the agency staff.[1]

1 The Securities and Exchange Commission disclaims responsibility for any private publication or statement of any SEC employee or Commissioner. This article expresses the interviewee's views and does not necessarily reflect those of the Commission, the Commissioners, or other members of the staff.

There has been a lot of discussion around institutional investors publicly reporting their short positions in their 13F filings as NIRI, the New York Stock Exchange (NYSE), and Nasdaq have all petitioned the SEC to implement a Dodd-Frank Act mandate around this, but the SEC didn't act on those petitions. Is there any update on this topic from your organization that you could share?

The Division of Trading and Markets staff is continuing to consider the petitions provided by NIRI, Nasdaq, and NYSE. The SEC is also receiving comment letters on an ongoing basis in response to the petitions. The staff continues to carefully consider the petitions and comment letters addressing the short sale disclosure regime and whether additional public disclosure about short positions would be of benefit to investors, the markets, and issuers. We note that there is already a considerable amount of short-sale data that is currently publicly available, free, or on a fee basis, including daily short sale volume and transaction data, short interest data, and fails to deliver data which we believe provides many benefits to the market.

Why have you identified issues related to market data and market access as one of your top priorities?

Market data, which is fundamental to investor participation in our markets, has been for years

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– and continues to be – at the forefront of discussions around market structure. A variety of market participants, including investor groups, have asked the Commission to examine issues surrounding the regulation of market data and its effects on efficiency and fairness. There has been considerable evolution in recent years of market data products and market access services, both those provided by the central securities information processors (SIPs) and those provided directly by national securities exchanges (exchanges). I am interested in how the evolution of SIP and exchange products and services has affected the ability of market participants to obtain the data and access needed to trade effectively in today's market structure.

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Do these market data and market access issues affect listed companies and their investors?

At the end of the day, data and access costs are borne by investors, as the ultimate end-users of the markets. To the extent these costs are too high or low, they may impact the rate of return investors seek when making their investment decisions. Issuers, of course, generally would like to attract a wide range of investors to help lower their cost of capital.

What changes to the current rules and arrangements are you considering?

The issues surrounding market data and market access are clearly complex, and market participants have expressed a range of views on how to address them. That is why our first step in considering these issues is to hold a public roundtable on market data and market access that will provide an opportunity for representatives from many different parts of the industry to express their views on any steps they believe are needed to address them. [Editor's note: the SEC roundtable on market data was scheduled for late October.]

As the agenda for the roundtables makes clear, we are thinking about things like potential steps to modernize the infrastructure for providing the market data products and market access services that market participants need to trade effectively in today's market structure, potential steps to improve the governance of the core data infrastructure, and potential steps to assure that the core data infrastructure is appropriately funded and that the associated fees are fair, reasonable, and not unreasonably discriminatory. Coming out of the roundtable, I anticipate that the SEC staff will be in a good position to consider potential initiatives in this area.

Could you please briefly explain what is the Transaction Fee Pilot and why are you doing it?

There is a robust debate on the impact of exchange fee-and-rebate pricing models and the potential issues they raise – like conflicts of interest, excessive intermediation, venue fragmentation, increased complexity, and cross-subsidization, to name a few. We've been operating under a fee cap set 13 years ago and, for better or worse, that fee cap still serves as the pricing benchmark used by most maker-taker exchanges today. I believe it's time to reevaluate that 30 mil cap.

As proposed, the Commission would conduct a two-year pilot, with an automatic sunset at one year unless extended, across all equities exchanges involving National Market System (NMS) stocks.

Some commenters on the proposed Transaction Fee Pilot suggest that the Pilot would cause spreads to widen in stocks, particularly for stocks in the no-rebate test group, which could harm issuers. Do you agree?

As you know, the Transaction Fee Pilot proposal was issued by the Commission for public comment. We are evaluating the comments carefully.

Commenters fundamentally disagreed about the extent to which a rebate of less than one-third of a penny per share has an impact on quoted spreads, if at all. For stocks with very narrow spreads or very wide spreads (typically for very thinly traded securities), a number of commenters expressed strong doubts about the likelihood that rebates have any meaningful impact on spreads. For example, one issuer commenter, which is an investment manager, noted that its own stock trades, on average, 1.5 million shares per day with a 7-cent spread. The commenter did not think the proposed pilot would negatively impact its stock's trading volume, spread, or displayed size. Other commenters thought that for certain stocks, the pilot would cause spreads to widen and cause negative impacts. An empirical review with data from a Commission initiated pilot can provide data to explore the impact on issuers.

Only exchanges would be included in the proposed Pilot. Why aren't Alternative Trading Systems (ATSs) included?

As noted above, the Commission proposed the pilot, and we are evaluating comment letters. In its proposal, the Commission stated that the inclusion of non-exchange trading centers, including ATSs, is likely to substantially increase the costs relative to the current proposal and may not be practical. Because broker-dealers that operate ATSs often bundle fees for ATS usage with other broker-dealer fees, the proposal might not practically be able to impose an access fee cap or prohibition on rebates on ATSs. Also, the Commission currently does not require that ATSs provide periodic public disclosures on their fees, as it does with national securities exchanges, and these fees do not need to be filed with or approved by the Commission. In addition, it will test a prohibition on rebates, and I'm not aware of any ATS that currently pays transaction-based rebates to its customers. Also, as noted in the proposal, even in the absence of including ATSs in the proposed Pilot, the Commission would be able to obtain information on the proportion of trades going to ATSs from several sources.

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We understand that the Commission adopted amendments to Regulation ATS for alternative trading systems that trade NMS stocks. What are the goals of these amendments?

ATSs provide a significant source of liquidity for NMS stocks and operate with similar complexity as national securities exchanges by offering similar matching mechanisms and order interaction protocols. NMS Stock ATSs compete directly with national securities exchanges but ATSs are not subject to the same operational transparency rules as national securities exchanges. To enhance operational transparency and reduce competitive imbalances with national securities exchanges, the Commission amended Regulation ATS to require NMS Stock ATSs to publicly disclose on new Form ATS-N information about their operations (including order types, use of market data, and fees) and the ATS-related activities of the broker-dealer operator and its affiliates that raise potential conflicts of interests. The Form ATS-N disclosures are designed to help market participants compare and evaluate the operations of NMS Stock ATSs and make informed decisions about where to route their orders to achieve their trading or investment objectives.

What do you see as the future of digital asset trading?

For digital assets to thrive, they must be traded in markets that are fair, efficient, and have investor protections. Currently, however, even for the most popular crypto asset, bitcoin, only a minority of global spot exchanges are subject to regulatory oversight. That said, I am encouraged by the interest of market participants in coming forward to register with the Commission and to develop trading platforms that would be regulated as securities exchanges or ATSs. I also recognize that market structure is not a one-size-fits-all proposition and look forward to working with market participants as they develop more mature and regulatory compliant trading systems. IR

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