



February 24, 2023

Ms. Vanessa Countryman (*via electronic delivery*)  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington D.C. 20549

Re: **File No. S7-32-22; Release No. 34-96496; Regulation Best Execution**  
**File No. S7-31-22; Release No. 34-96495; Order Competition Rule**  
**File No. S7-30-22; Release No. 34-96494; Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders**  
**File No. S7-29-22; Release No. 34-96493; Disclosure of Order Execution Information**

Dear Ms. Countryman:

We submit this letter on behalf of Virtu Financial, Inc. (“Virtu”) to support the February 8, 2023 submission by the Securities Industry and Financial Markets Association (“SIFMA”) requesting that the U.S. Securities and Exchange Commission (the “Commission”) publicly release and identify certain information central to the economic analyses underpinning four recent proposed rulemakings related to national securities market structure (the “Proposals”) and extend the comment period for each Proposal once such information is released and/or identified.<sup>1</sup>

Specifically, we also request that the Commission: (1) publicly release anonymized subsets of Consolidated Audit Trail (“CAT”) data used in connection with the tables and figures in the Proposals’ economic analyses;<sup>2</sup> (2) identify the specific broker-dealers whose Rule 605 and Rule 606 reports—which are publicly available—are used in the Proposals to facilitate replication of the Commission’s analyses of the data in these

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<sup>1</sup> “Order Competition Rule,” Release No. 34-96495; File No. S7-31-22, Securities and Exchange Commission, December 14, 2022; “Regulation Best Execution,” Release No. 34-96496; File No. S7-32-22, Securities and Exchange Commission, December 14, 2022; “Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders,” Release No. 34-96494; File No. S7-30-22, Securities and Exchange Commission, December 14, 2022; “Disclosure of Order Execution Information,” Release No. 34-96493; File No. S7-29-22, Securities and Exchange Commission, December 14, 2022

<sup>2</sup> For the avoidance of doubt, as with SIFMA, Virtu is not requesting the release of any CAT data that could be attributable to a particular market participant. Rather, Virtu seeks the release of only raw order-level data (e.g. anonymized orders, prices, quantities of each order).

reports; and (3) extend the comment period for each Proposal to at least 90 days following the Commission's release of the data used to support the Proposals.

As Virtu previously has suggested in public statements and communications with Commission staff, while there may be ways to enhance the national securities markets, it is important that any changes to the market structure do not diminish important benefits currently being delivered to retail investors. For example, the broad availability of commission-free trading, the speed and quality of execution and the significant price and size improvement associated with retail orders should not be imperiled by changes to market structure with a risky, highly questionable and potentially harmful impact on investors.

Recent publicly available data analyses quantify a number of the benefits experienced by retail investors in the current market structure. For example, there has been a persistent narrowing of bid-ask spreads, which have dropped an average of 50 basis points since 1990, attributable to “changing technology innovation and competition.”<sup>3</sup> Additionally, market-wide benefits from real price improvement approached \$11 billion in 2020.<sup>4</sup>

The public does not, however, have access to sufficient data to analyze the benefits the Commission claims will arise from the Proposals. CAT data, in particular, underpins much of the economic analysis the Commission relies on for the Proposals, but the public does not have access to that data. In order to assess the implications of the Commission's recent Proposals—including how the Proposals may undercut the benefits currently experienced by retail investors—the public must be able to review and analyze this data. A thorough review and analysis of this data, along with an evaluation of the purported costs, benefits, and economic bases for the Proposals will inevitably require more time than presently available. It is therefore imperative that the Commission extend the comment period for each Proposal for at least 90 days following the Commission's release or identification of the data requested by SIFMA.

This is especially important here, where public involvement in the rulemaking process was extremely limited because the Commission elected not to follow the procedures used in proposing and finalizing Regulation NMS in 2005. In promulgating Regulation NMS, which implemented a number of rules addressing order execution and handling, the Commission “engaged in a thorough, deliberate, and open rulemaking

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<sup>3</sup> Kristin Wegner, Katherine Hong, Anush Musthyala and Sreeya Narra, *A Report on Market Automation and Dependable Liquidity in Times of Uncertainty: Investor Savings from Narrowed Bid Ask Spreads, Markets Functioning as Intended* at 5, MODERN MARKETS INITIATIVE (July 2022).

<sup>4</sup> US Equity Market Structure Analysis: Analyzing the Meaning Behind the Level of Off-Exchange Trading Part II, SIFMA Insights at 14 (Dec. 2021), <https://www.sifma.org/wp-content/uploads/2021/12/SIFMA-Insights-Analyzing-the-Meaning-Behind-the-Level-of-Off-Exchange-Trading-Part-II.pdf>.

process” that “provided at every point an opportunity for public participation and debate.”<sup>5</sup> It “actively sought out the views of the public and securities industry participants.”<sup>6</sup>

In formulating and presenting the Proposals, however, the Commission did not conduct any pilot programs to test the proposed market structure changes, hold public hearings or roundtables, form an advisory committee, or issue concept releases. In the absence of meaningful public participation throughout the rulemaking process, Virtu strongly supports SIFMA’s request for the Commission to provide the public with both access to critical data underlying the Proposals and sufficient time to analyze and evaluate that data.

Respectfully submitted,



Thomas M. Merritt  
Deputy General Counsel

cc: The Honorable Gary Gensler, Chair  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner  
The Honorable Mark T. Uyeda, Commissioner  
The Honorable Jaime E. Lizarraga, Commissioner

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<sup>5</sup> Regulation NMS, Final Rule, Release No. 34-51808; File No. S7-10-04 (2005) at 8, available at <https://www.sec.gov/rules/final/34-51808.pdf>

<sup>6</sup> *Id.*