

COMMITTEE ON CAPITAL MARKETS REGULATION

September 26, 2014

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

VIA ELECTRONIC MAIL: rule-comments@sec.gov

Re: “Plan to Implement a Tick Size Pilot Program”

Dear Mr. Fields:

The Committee on Capital Markets Regulation (the “**Committee**”) is grateful for the opportunity to comment on the Proposed Plan to Implement a Tick Size Pilot Program (the “**Proposed Plan**”).¹ The Proposed Plan expands trading and quoting tick sizes for certain pilot securities, with the goal of assessing whether such a conversion would improve market liquidity.²

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-five leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean, Columbia Business School) and John L. Thornton (Chairman, The Brookings Institution) and directed by Hal S. Scott (Nomura Professor and Director of the Program on International Financial Systems, Harvard Law School). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

This letter sets forth the Committee’s general concerns with respect to the Proposed Plan’s 21-day comment period.³ Given the Proposed Plan’s significance and the complexity of implementation, we strongly believe the comment period should be no fewer than 60 days.

¹ U.S. Securities and Exchange Commission, *Plan to Implement a Tick Size Pilot Program* (Aug. 26, 2014), available at <http://www.sec.gov/divisions/marketreg/tick-size-pilot-plan-final.pdf>.

² *Id.*

³ Press Release, U.S. Securities and Exchange Commission, *SEC Announces Pilot Plan to Assess Stock Market Tick Size Impact for Smaller Companies* (Aug. 26, 2014), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542761050#.VB7ROPldWr0>.

Comment Period Statutory Requirements and Standards

The legal requirement for comment period length is set forth in the Administrative Procedure Act (the “APA”).⁴ The APA states that an “agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation[.]”⁵ Multiple courts have held that a comment period of not less than 30 days is generally required to meet the APA’s “opportunity to participate” standard.⁶

In addition, courts have noted that a reasonable comment period is a critical factor in determining whether an agency rulemaking process violated the APA by failing to provide the public with an opportunity to participate.⁷

Finally, Executive Order 12866, which provides for presidential review of agency rulemaking via the Office of Management and Budget’s Office of Information and Regulatory Affairs, states that the public’s opportunity to comment “in most cases should include a comment period of not less than 60 days.”⁸

Prevailing precedent, both legal and administrative, thus supports the extension of the Proposed Plan’s comment period to at least 60 days. The Proposed Plan presents a number of important concerns, and we believe market participants should be given adequate time to carefully study and comment on these critical issues.

* * *

Thank you very much for your consideration of our views. Should you have any questions or concerns, please do not hesitate to contact me at [REDACTED] at your convenience.

Respectfully submitted,



Brian A. Johnson
Executive Director for Research

⁴ 5 U.S.C. § 553(c).

⁵ *Id.*

⁶ *See Chem. Mfrs. Ass'n v. EPA*, 899 F.2d 344, 347 (5th Cir.1990), *see also Fleming Cos. v. USDA*, 322 F.supp. 2d 744, 764 (E.D. Tex. 2004).

⁷ *See Fla. Power & Light Co. v. U.S.*, 846 F.2d 765, 772 (D.C. Cir. 1988).

⁸ Vanessa Burrows & Todd Garvey, *Congressional Research Service: A Brief Overview of Rulemaking and Judicial Review* 1, 2 n.12. (Jan. 4, 2011), citing Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51735 (Oct. 4, 1993).