

March 31, 2023

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**Re: Order Competition Rule – File Number S7-31-22  
Further Definition of “As a Part of a Regular Business” in the Definition of  
Dealer and Government Securities Dealer – File Number S7-12-22**

Dear Ms. Countryman:

Thank you for the opportunity to comment on the Securities and Exchange Commission’s (“SEC” or “Commission”) Order Competition Rule Proposal (“Proposal”)<sup>1</sup>. Two Sigma<sup>2</sup> includes two institutional private fund advisers that specialize in process-driven, systematic investment strategies and techniques, namely Two Sigma Investments, LP and Two Sigma Advisers, LP (collectively, “we” or “our”). We perform quantitative analysis and leverage technology to develop and implement investment, portfolio, risk management, and execution strategies and techniques on behalf of our investors. Two Sigma also includes an SEC- and FINRA-registered broker-dealer, Two Sigma Securities, LLC (“TSS”), which operates a wholesale market making business and an options market making business, in addition to other liquidity providing businesses in equities, futures, and ETFs across the globe. While TSS has submitted an extensive comment letter on the Proposal, we write separately from our standpoint as private fund managers, to address specifically our concerns regarding how the Commission’s proposal to provide “Further Definition of ‘As a Part of a Regular Business’ in the Definition of Dealer and Government Securities Dealer” (“Dealer Proposal”)<sup>3</sup> significantly limits the ability of firms like ours to participate in the market structure envisioned by the Proposal.

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<sup>1</sup> *Order Competition Rule*, 88 Fed. Reg. 128 (Jan. 3, 2023) (“Proposal”).

<sup>2</sup> Two Sigma is a group of financial sciences companies. We combine rigorous inquiry, data analysis, and invention to solve challenges in investment management, securities, insurance, private equity, and venture capital. Founded in 2001, Two Sigma employs over 2000 people, and has offices in New York, Houston, Portland, London, Tokyo, Hong Kong, and Shanghai.

<sup>3</sup> *Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer*, 87 Fed. Reg. 23054 (Apr. 18, 2022) (the “Dealer Proposal”).

The Proposal contemplates the creation of new “fair and open” auctions with “two primary goals” that help advance the Congressional objectives set forth in Section 11A of the Securities Exchange Act of 1934.<sup>4</sup> First, the Commission states that it is seeking to enhance the opportunity of retail investors to receive more favorable prices than they receive in the current market structure. Second, the Commission states that it is seeking to expand opportunities for such retail orders to meet directly with other investor orders without the participation of a dealer. The Commission goes on to note that the “auctions would give the trading interest of other investors, particularly institutional investors, an opportunity to interact directly (without the participation of a dealer) with, and thus execute against, the marketable orders of individual investors.”<sup>5</sup>

The central assumption underpinning these goals is that institutional investors like Two Sigma will be eager to participate in the newly created auctions because of the prospect of receiving better-priced executions. The Commission states “[i]nstitutional investors...potentially could trade at better prices if given an opportunity to interact with the marketable orders of individual investors in fair and open auctions.”<sup>6</sup> We agree that if these auctions were instituted, despite the significant structural problems noted in the comment letter of our affiliate TSS, institutional investors like Two Sigma with the technological capabilities to participate would consider participating in those auctions if such action seemed accretive.

However, the Dealer Proposal has erected serious obstacles against institutional investor participation. Specifically, the qualitative thresholds in the Dealer Proposal seem to cast as dealer activities the sort of tactics necessary for institutional investors to be fulsome participants in the auctions. For example, vigorous participation in multiple auctions would seem to require “routinely expressing trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants.”<sup>7</sup> But the Dealer Proposal notes that such tactics constitute dealer activity, so only dealers could engage in a fulsome way in the auctions.

Similarly, under the Dealer Proposal, “routinely” making “roughly comparable” purchases and sales of “the same or substantially similar” securities in a day triggers dealer registration. The SEC further notes that the term “routinely” means “more frequent than occasional but not

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<sup>4</sup> Proposal at 140.

<sup>5</sup> Proposal at 148.

<sup>6</sup> Proposal at 130.

<sup>7</sup> Dealer Proposal at 23065.

necessarily continuous”, “roughly comparable” means “within a reasonable range”, and that “substantially similar” should be interpreted based on “a facts and circumstances analysis” of a nonexclusive list of factors. These broad and ambiguous terms make it treacherous for institutional investors to engage in the proposed auctions in a fulsome way. The qualitative thresholds for dealer registration create significant regulatory uncertainty regarding auction participation because, as we noted in our comment letter<sup>8</sup> submitted in response to the Dealer Proposal, that proposal is vague and is not sufficiently clear for advisers to rest assured that well-established investment strategies needed to engage in the proposed auctions would not trigger dealer registration.

As a result, we are concerned that the interplay of these proposals if either is finalized as proposed will result in only firms registered as dealers interacting with retail orders in the auctions. The Dealer Proposal in its current form significantly limits the ability of institutional investors to participate in the auctions and is therefore at odds with the Commission’s primary goals behind the auctions. Counter to what the Commission is seeking with the Proposal, interactions with retail orders will continue to be tightly constrained for the vast majority of institutional investors.

Sophisticated investors would certainly observe the auctions as additional indications of trading interest in the market, but they are unlikely to actually participate in the auctions in a fulsome manner. This outcome seems like a worst-case scenario for retail investors as their trading interest will inform sophisticated investors about market dynamics without the benefit of having more competitive auctions with deep and diverse institutional investor participation.

The Proposal does not contemplate this interaction with the Dealer Proposal and the significant chilling effect that will result, so we would ask the SEC to assess this major limitation on liquidity in the proposed auctions before moving forward with finalizing either proposal. The impact of the Dealer Proposal will make this Proposal much less effective than the SEC contemplates as firms like ours will not be able to participate in the auctions to the extent envisioned in the Proposal.

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<sup>8</sup> Letter from Matthew B. Siano, Esq., Managing Director, General Counsel, Two Sigma, to Vanessa Countryman, Secretary, SEC (May 27, 2022), available at <https://www.sec.gov/comments/s7-12-22/s71222-20129704-296000.pdf>.

We would welcome the opportunity to discuss this letter and engage in further dialogue with the Commission on these topics.

Respectfully submitted,



Matthew B. Siano, Esq.

Managing Director, General Counsel