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December 14, 2023

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Chair Gensler,

We are writing to express our deep concern with the SEC's recent proposal to prohibit volume-based exchange transaction pricing. This initiative is misguided, lacks an empirical foundation, and exhibits a dangerously myopic perspective on its broader market implications.

Volume-based discounts are not anomalies, but fundamental components found across various sectors, fostering competition and enhancing consumer benefits. In the securities markets, they play a similarly vital role, acting as key instruments in promoting liquidity. The move to prohibit these discounts undermines basic market dynamics and reveals a concerning misunderstanding of market operations at the Commission.

The SEC is once again proposing sweeping reforms that could disrupt the market ecosystem, relying on conjecture rather than concrete evidence to justify the need for such changes. Specifically, the SEC fails to demonstrate that volume-based pricing significantly affects the ability of small brokers to compete with larger ones, as other factors such as technology, talent, and marketing play more substantial roles. The SEC should avoid unnecessary interference in a complex system that supports trillions of dollars of investments.

The SEC should not misinterpret its authority to oversee the world's largest capital markets as an invitation to micromanage market operations and dictate competition within them. Instead, the Exchange Act directs the SEC to assess whether its rules impose undue burdens on market competition. Indeed, the SEC has historically relied on competition between market centers to provide benefits to investors. The volume-based pricing proposal contradicts this statutory requirement by aiming to enhance competition in one area while undermining it in another.

The proposal could have implications for trading behaviors, liquidity patterns, and the overall efficiency and stability of the market infrastructure. Upending our well-functioning regulatory framework in these ways will penalize efficiency and market-driven pricing strategies, leading to a less transparent market and fragmented liquidity, both of which contradict the SEC's own mandates.

Additionally, the proposal raises concerns about the potential for a decrease in competition, ultimately resulting in fewer choices and potentially higher costs for investors. It's vital to consider the full spectrum of consequences, including the impact on market diversity and consumer options, when implementing new regulations. Ensuring a balanced approach is crucial to maintain a competitive and efficient market that serves the best interests of all participants.

Amidst these concerns, we strongly urge the Commission to withdraw this proposal and redirect its resources toward cultivating a regulatory environment that is coherent, transparent, and responsive to the actual dynamics of our market ecosystem. We also request responses to the following questions by December 22, 2023:

1. Has the SEC's Division of Economic and Risk Analysis (DERA) rigorously evaluated the empirical basis for prohibiting volume-based exchange transaction pricing? What conclusive evidence supports the claim that such discounts harm investors, present systemic risks, or unfairly disadvantage certain market participants?

2. What analysis has been conducted on the implications of shifting trading activities from exchanges to off-exchange venues? How does DERA evaluate the trade-offs involved?

3. Has the SEC's Division of Trading and Markets assessed the potential impact of eliminating volume-based transaction fees on market liquidity, particularly regarding the incentivization of market makers?

4. How do these proposed rules compare with international practices? Has the SEC's Office of International Affairs analyzed the potential impact of these changes on the global competitiveness of U.S. exchanges?

5. Can the SEC provide insights from its Office of Compliance Inspections and Examinations on how this rule might affect the existing regulatory framework, interact with other pending rulemakings, introduce new market vulnerabilities, or affect the competitiveness of U.S. markets?

Sincerely,

Dan Meuser
Member of Congress

Ann Wagner
Chairman
Subcommittee on Capital Markets

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Pete Sessions
Member of Congress

Bill Huizenga
Member of Congress

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cc:
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Commissioner Caroline A. Crenshaw
Commissioner Mark T. Uyeda
Commissioner Jaime Lizarraga