WE THE INVESTORS

December 14, 2023

By Email

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 205499–1090
rule-comments@sec.gov

Re: 17 CFR Parts 232 and 240 [Release No. 34-98766; File No. S7-18-23] RIN 3235-AN29 Volume-Based Exchange Transaction Pricing for NMS Stocks

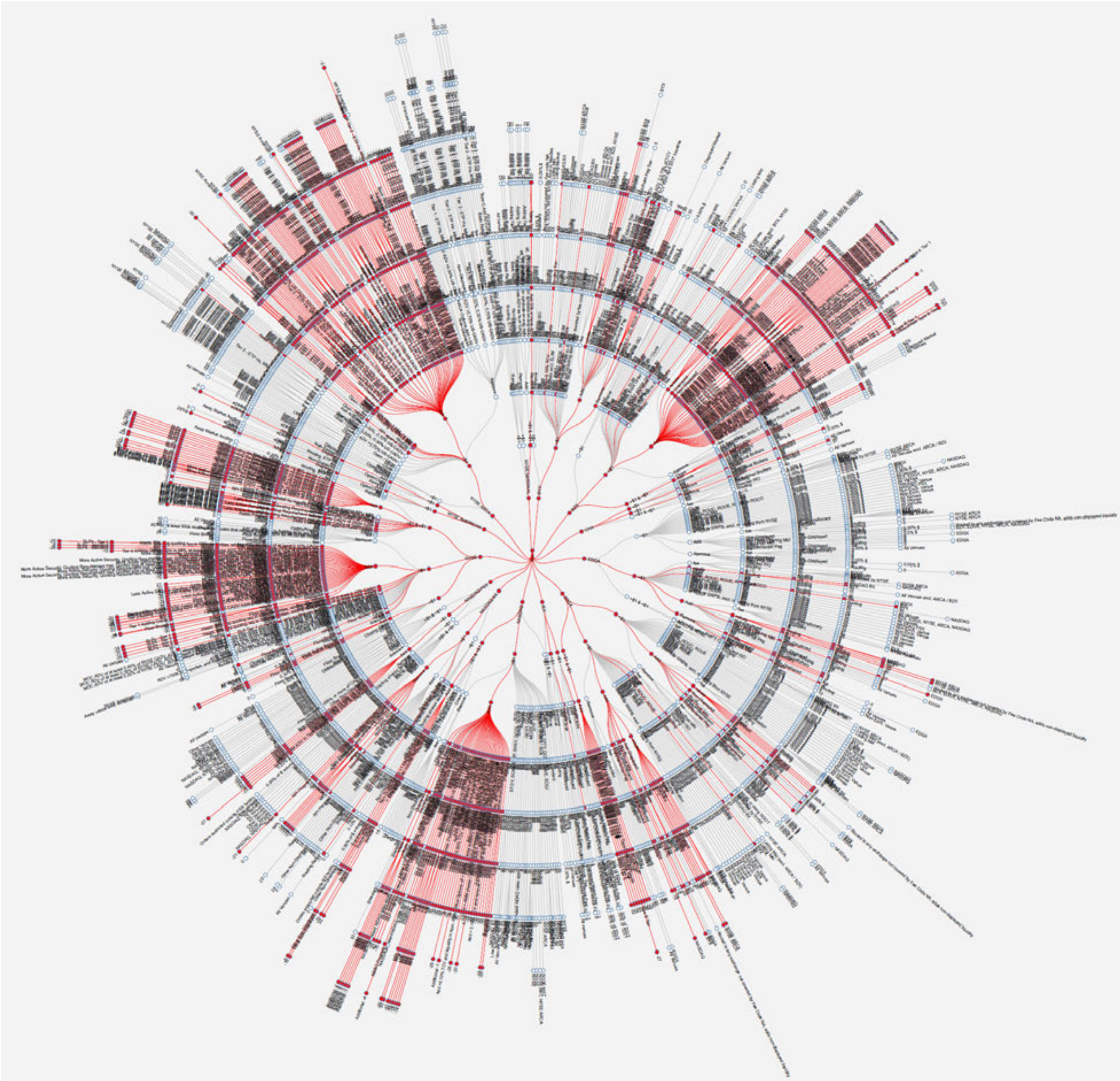
Ms. Countryman:

We the Investors ("WTI")[1] appreciates the opportunity to comment on the SEC's Proposed Rule entitled Volume-Based Exchange Transaction Pricing for NMS Stocks. WTI has organized around five key principles as laid out in our Investors' Bill of Rights.[2] These include Transparency; Simplicity and Fairness; Choice and Control; Best Execution; and Better Settlement and Clearing. This comment letter will focus on three of those principles - Transparency; Simplicity and Fairness; and Best Execution.

WTI believes eliminating rebate tiers is critical to enhance competition among brokers and increase competition among exchanges as well. Volume-based rebate tiers create incentives for brokers to route for rebates, which directly conflicts with their primary duty of best execution to their client. Such conflicts throughout finance drive inefficiency and strangle innovation.

Rebates based on volume are substantially larger for large brokers, so much so that on a net basis, the largest brokers receive a net payment from exchanges while small brokers always make a net payment. As things stand, the incumbents' mystifyingly complicated schedule of rebate tiers is best reflected by this graphic created by the Royal Bank of Canada (RBC) in a 2018 study[3]:

[1] We The Investors is a grassroots advocacy campaign launched in March 2022. WTI is built by, and for, individual investors. Our mission is to educate individual investors in order to empower them to represent themselves on market structure issues. We are supported by industry firms and over one hundred thousand individual investors.
[2] The Investors' Bill of Rights can be accessed at: wetheinvestors.org
[3] https://www.sec.gov/comments/s7-05-18/s70518-4527261-176048.pdf



The spiral shows substantial customization where many buckets are designed to shape a rebate program for a narrow group of brokers (or even a single broker). Carving up the market results in remarkably stable market shares for incumbents, diminishing competition. Brokers are naturally driven to meet bonus levels that offer substantially higher rebate payments relative to the base case, especially in an opaque aspect of business where exercising the conflict is less perceptible.

To remind everyone of how long this fight against rebates persisted and the extent to which rebates influence routing, in a June 17, 2014 hearing before the Senate Permanent Subcommittee on Investigations entitled [Conflicts of Interest, Investor Loss of Confidence and High Speed Trading in US Stock Markets], Steven Quirk, formerly of TD Ameritrade and currently at Robinhood, testified that TD Ameritrade routed virtually all of their customers' nonmarketable orders to the exchanges that offered the highest rebates. Specifically, Chairman

Carl Levin posited to TD Ameritrade executive Steven Quirk that "your subjective judgment as to which market provided best execution for tens of millions of customer orders virtually always led you to route orders to the markets that paid you the most." Mr. Quirk famously answered, "virtually, yeah."

Looking forward, as the monthly rebate-tier bonus payment is eliminated, conflicts of interest will then be reduced, manifesting only on a transaction-by-transaction basis. While we believe that ultimately all rebates and off-exchange Payment for Order Flow (PFOF) need to be eliminated to completely remove conflicted order routing, we recognize that there are benefits to be had by reducing the magnitude and durability of these conflicts. Doing so will enhance competition among exchanges and brokers.

If we boil down the consequences of eliminating rebate tiers as applied to brokers acting as agents, small brokers would no longer subsidize the trading costs of large brokers as the rebate offered would no longer differ based on volume or other performance thresholds. This would incentivize more small brokers to enter the market, and make new and existing small brokers more competitive.

WTI would like to point out the parallels found in Citi's March 31, 2023 comment on proposed equity market reforms, where Citi specifically discussed rebate tiers at pg. 6.:

> We view exchange tiers as anti-competitive in that they require significant scale to effectively offer the most competitive cost. Tiers can discourage innovation by not rewarding superior routing strategies and techniques, and can make it more difficult for smaller brokers and new entrants to the market who might lack scale. This can discourage market-making activity from smaller brokers who will have higher costs than larger wholesale market makers, and as such may be unable to provide the level of price improvement to retail orders that larger wholesale market makers can. All of this leads to a less competitive market, in our view.

On occasion, highly perceptive members of Congress predict and remark with great precision about harmful regulation that years later drives regulatory action. It is notable for the proposal at hand that three Republican members of House Financial Services Committee during 2020 commented precisely on rebate tiers, expressing concern for small brokers and increasing concentration. These three prominent members wrote their concerns to then Chair Clayton in 2020.[3]

Since that time, the members' concerns have been confirmed as the secular decline in brokers continues to this day. It is rare to see such a bipartisan connection where the interests of three key Republicans are taken up directly by an SEC Chairman from the opposite party. The Courts

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[3] *Letter to Chair Clayton from Representatives Ted Budd, Ann Wagner and Alex Mooney (January 31, 2020) available at*: https://uploads-ssl.webflow.com/619e87e78bd4839a1f4090fa/657b6a730c437fc9d2fa79c2_Letter%20to%20Chairman%20Clayton%20Rebate%20Tiers%202020.pdf

will undoubtedly hear this matter and should be most receptive when such a bipartisan intersection occurs.

WTI would add that, as stated in our prior comments[4], we strongly encourage the commission to end the conflict of interest entirely by eliminating rebates and off-exchange PFOF altogether. While this is not the goal of the current proposed reform, we anticipate that the vast gains made from these reforms will confirm the value of eliminating conflicts of interest wherever they are found.

Sincerely,

[redacted]

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[4] *See We The Investors March 15, 2023 Comment Letter on Rule Proposal No. 34-96496; File No. S7-32-22 Regulation Best Execution and Rule Proposal No. 34-96494; File No. S7-30-22 Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders*: https://www.sec.gov/comments/s7-30-22/s73022-typef.pdf