March 31, 2023

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

Submitted via electronic filing: http://www.sec.gov/rules/proposed.shtml

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

BlackRock, Inc. (together with its affiliates, "**BlackRock**")[1] respectfully submits its comments to the Securities and Exchange Commission ("SEC" or "Commission") in response to the Commission's request for comment on proposed amendments and new rules to, and related to, Regulation National Market System ("Regulation NMS") under the Securities Exchange Act of 1934 ("Exchange Act") (17 CFR 242.600 *et seq*.) that would, among other ends: (1) update the disclosures required for order executions in national market system ("NMS") stocks;[2] (2) adopt variable minimum pricing increments for the quoting and trading of NMS stocks, reduce access fee caps, and enhance the transparency of better priced orders;[3] (3) add a new rule that would require certain trading venues to expose certain orders of individual investors in *qualified auctions* operated by *open competition trading centers* (as each such term is proposed to be defined or described by the proposed rule) before internally executing those orders;[4] and (4) introduce new rules under the Exchange Act relating to a broker-dealer's duty of best execution.[5] We believe that since the amendments and new rules of each proposal are inextricably linked, any potential effects on markets, investors, and other market participants can only be properly understood by not only considering the proposals individually, but also as they relate to one another and how they interact with other recent Commission

[1] BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers, and other financial institutions, as well as individuals around the world.
[2] SEC, Disclosure of Order Execution Information, Rel. No. 34-96493 (Dec. 14, 2022) *available at* https://www.sec.gov/rules/proposed/2022/34-96493.pdf ("Order Disclosure Proposal").
[3] SEC, Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, Rel. No. 34-96494 (Dec. 14, 2022) *available at* https://www.sec.gov/rules/proposed/2022/34-96494.pdf ("Pricing and Access Fee Proposal").
[4] SEC, Order Competition Rule, Rel. No. 34-96495 (Dec. 14, 2022) *available at* https://www.sec.gov/rules/proposed/2022/34-96495.pdf ("Order Competition Proposal").
[5] SEC, Regulation Best Execution, Rel. No. 34-96496 (Dec. 14, 2022) *available at* https://www.sec.gov/rules/proposed/2022/34-96496.pdf, ("Best Execution Proposal" and together with the Order Disclosure Proposal, the Pricing and Access Fee Proposal and the Order Competition Proposal, the "Market Structure Proposals" and each a "proposal").

proposals which impact market structure.[6] Therefore, BlackRock is submitting its comments to these proposals in a single letter and respectfully requests that our comments be considered as they relate to one or more proposals.

BlackRock is supportive of efforts to ensure that the rules which underpin the objectives of the national market system effectively meet the statutory and regulatory aims of creating efficient, fair, and orderly markets.[7] We agree with the Commission that meeting those objectives requires consideration of continually changing economic conditions, technological advancements, evolving investor behavior, and other developments by an increasingly diverse set of market participants. Furthermore, as fiduciary to its clients, BlackRock is supportive of prudent regulatory measures that efficiently, and effectively, reinforce central tenets to market integrity and investor protection like the duty of best execution.

In particular, among other proposed changes, BlackRock is generally supportive of the Commission's efforts to create variable minimum pricing increments ("ticks" or "tick sizes")[8] — though, as discussed below, we do recommend several modifications to the proposed tick size amendments— to enhance order execution quality disclosures for the public,[9] and to accelerate the implementation of some Market Data Infrastructure ("MDI") rules.[10] These reforms shift market structure in the right direction in response to recent market evolution. We believe that these proposed changes, along with others described below, have the potential to foster greater market transparency and to improve trade execution efficiency to the benefit of investors.

However, we are recommending several changes to the Market Structure Proposals that we believe are necessary to avoid potential adverse impacts to investors and market efficiency. We also believe that the current proposals present significant interpretive questions and compliance challenges. We are therefore also requesting further clarification on certain aspects of the proposals.

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[6] SEC, Amendments Regarding the Definition of "Exchange" and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities, Rel. No. 34-94062 (Jan. 26, 2022) *available at* https://www.sec.gov/rules/proposed/2022/34-94062.pdf ("Definition of 'Exchange' Proposal"); SEC, Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer, Rel. No. 34-94524 (March 28, 2022) *available at* https://www.sec.gov/rules/proposed/2022/34-94524.pdf ("Dealer Proposal").

[7] 5 U.S.C. 78k-1 ("section 11A"). These objectives are: (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; (3) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity, consistent with objectives 1 and 4, for investors' orders to be executed without the participation of a dealer. 15 U.S.C. 78k-1(a)(1)(C).

[8] Pricing and Access Fee Proposal at 87 FR 80268.

[9] Order Disclosure Proposal at 88 FR 3795.

[10] SEC, Market Data Infrastructure, Rel. No. 34-90610 (Dec. 9, 2020), 86 FR 18596 (Apr. 9, 2021) available at https://www.sec.gov/rules/final/2020/34-90610.pdf.

As discussed in more detail below, we recommend:

- Reducing the number of proposed minimum pricing increments to three tiers: one that is narrower than a penny, one that is equal to a penny, and one that is wider than a penny;
- Narrowly confining the application of new tick sizes to securities where the current increment is irrefutably mismatched with the character of the security;
- Eliminating or providing a size exemption to the minimum pricing increment for trading;
- Fostering order competition through the development of more flexible retail trading mechanisms rather than an overly prescriptive auction;
- Modifying the best execution standard to require the express consideration of multiple factors other than price when a broker-dealer complies with its duty of best execution;
- Applying best execution to institutional customer executions against a broker-dealer's quotation or limiting the institutional customer exemption only to quotations which are received in competition;
- Sequencing the implementation dates of the proposals so that market participants, and the Commission, can effectively identify and address any externalities created by the rule changes; and,
- Requiring Commission staff to produce a detailed report analyzing the cumulative and individual effects of the Proposals no later than 24 months after implementation.

<u>Order Disclosure Proposal</u>

BlackRock is supportive of the proposed amendments to Rules 600 and 605[11] of Regulation NMS under the Exchange Act. We agree with the Commission that the proposed amendments would likely "promote increased transparency of order execution quality, increase the information available to investors, and help to promote competition among market centers and broker-dealers, while ameliorating the potentially adverse effects of fragmentation on efficiency, price transparency, best execution of investor orders, and order interaction."[12] BlackRock believes that the order execution disclosures required by Rule 605 are a valuable source of information which the investing public reviews to compare and evaluate executions and that improvements to the quality of the data would enhance its utility. Furthermore, we believe that the proposed amendments to Rules 600 and 605 reflect technological developments and changes to market structure that have occurred since their initial adoption and that the amendments are appropriately tailored to meet the underlying statutory objectives of the rules.

<u>BlackRock recommends that the Commission consider revising the proposed rule to provide for the generation of Rule 605 reports from the data collected by the Consolidated Audit Trail ("CAT") to ensure that the potential costs do not outweigh</u>

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[11] 17 CFR 242.600 ("Rule 600") and 605 ("Rule 605").
[12] Order Disclosure Proposal at 88 FR 3788.

the benefits from enhanced reporting. Currently, each market center is responsible for implementing the systems and processes necessary to obtain, store, and process the information required to prepare their own Rule 605 disclosures. According to the Commission's estimates, there are 272 existing reporting firms as well as 103 new entities which would have to comply with the expanded scope of the proposal.[13] If each of these firms generates its own reports, there would be needless duplication of the costs and burdens associated with the implementation and ongoing maintenance of disclosures. Further, a centralized processor for Rule 605 reports would also eliminate the inevitable inconsistencies or errors which arise when independent systems are responsible for creating reports.[14] Lastly, we recognize that some of the proposed modifications—such as the reporting changes related to non-marketable limit, stop, and short sale orders—may impose consequential costs for report preparers due to the complexity of the calculations. We believe that using the CAT to generate Rule 605 reports would be a cost-effective way to ensure that the proposed data elements and any future enhancements do not unnecessarily, and/or overly, burden market participants.

We also support the centralization of Rule 605 data in an electronic system, as suggested by the Commission in the proposal.[15] Currently, accessing Rule 605 reports can be an onerous and time-consuming process for investors because it is widely dispersed across numerous market center websites where reports can be difficult to locate and retrieve. Establishing a centralized platform would substantially improve accessibility which would likely result in the greater utilization of Rule 605 disclosures and better accomplish the objectives of promoting competition and increasing transparency of order execution quality.

We would, however, appreciate greater clarification regarding how Rule 605 disclosure requirements would apply to a system which may potentially be captured as an Alternative Trading System ("ATS") under the Commission's outstanding proposal to amend the definition of an ATS under Exchange Act Rule 3b-16.[16] It is unclear, for example, whether the Definition of "Exchange" Proposal would subject order and execution management systems ("OEMSs") to Reg ATS. As discussed in comment letters to the proposal, OEMSs bear little to no resemblance to traditional market centers and should not be deemed "exchanges" because orders are not executed on OEMSs. [17] Unlike market centers, OEMSs only route

[13] Order Disclosure Proposal, Table 10 at 88 FR 3879 and Table 11 at 88 FR 3880.
[14] Separate reporting systems, for example, may use different sources for quotation data, such as a self-aggregated data feed, the consolidated tape, or a competing consolidator under the MDI rule. Small variations in the bids and offers observed by each system may result in minor differences in price improvement metrics for orders that were otherwise received and executed concurrently.
[15] Order Disclosure Proposal at 88 FR 3894.
[16] Definition of "Exchange" Proposal.
[17] *See* SIFMA AMG , Comment Letter on Notice of Proposed Rulemaking on amendments to Exchange Act Rule 3b-16 regarding the definition of "Exchange"; Regulation ATS for ATSs That Trade U.S. Government Securities, NMS Stocks, and Other Securities; Regulation SCI for ATSs That Trade U.S. Treasury Securities and Agency Securities (April 18, 2022) *available at* https://www.sec.gov/comments/s7-02-22/s70222-20124028-280153.pdf; *See* ICI, Comment Letter, Amendments to Exchange Act Rule 3b-16 Regarding the Definition of "Exchange" and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System ("NMS") Stocks, and Other Securities (April 18, 2022) *available at* https://www.sec.gov/comments/s7-02-22/s70222-20124231-280809.pdf.

orders based on the explicit order handling direction provided by a user. Furthermore, with regard to Rule 605, OEMSs would not have the necessary data—and are not structured in a manner—that would allow them to file Rule 605 reports. *We believe this further distinguishes OEMSs from exchanges and therefore warrants explicit guidance from the Commission affirming as much in the adopted final rule. However, if the Commission adopts its amendments to Reg ATS as proposed, we would request clarification that these entities would not be subject to Rule 605, or that orders managed by OEMSs would not be considered covered orders since customers are providing explicit order handling instructions*.

Pricing and Access Fee Proposal

Minimum Pricing Increments—Tick Sizes. *BlackRock supports the adoption of a tiered and targeted minimum pricing increment framework but believes that the proposed tick sizes and the categorization of securities within specific tick bands do not suitably capture the determinative factors which influence how NMS stocks trade*.[18] We are therefore recommending changes that we believe will improve execution quality without impinging on competition between trading venues.

We agree with the Commission that a "one-size-fits-all" approach to tick sizes would likely result in market inefficiencies that impose unnecessary costs on investors.[19] Tick sizes have a profound impact on the trading dynamics of securities. Minimum pricing increments which are too small excessively fragment liquidity across multiple price levels, destabilize order book priority by enabling *de minimis* price improvement, and contribute to fleeting quotations that increase message traffic and infrastructure costs for the industry. Tick sizes which are too large inhibit price discovery and raise trading costs by limiting price granularity; this leads to inordinate order book competition and the overdevelopment of market ecosystems to circumvent the pricing increment. Policymakers must trade off these effects when setting minimum pricing increments to achieve a healthy equilibrium. When properly calibrated, tick sizes can foster price discovery and market quality by enabling the optimal degree of price fidelity[20] and encouraging liquidity formation at materially relevant price increments.

Tick Categorization. *BlackRock recommends that in addition to the time weighted quoted spread, the Commission should incorporate other factors for designating tick sizes, such as the average quoted size, ratio of average quoted size to average traded size, daily traded volume, or stock price*.[21] We believe that the proposed criteria for assigning tick size bands should not be solely limited to the time weighted average quoted spread. Although quoted spread may function as a rough proxy for identifying tick-constrained or tick-excessive securities, complex

[18] Pricing and Access Fee Proposal at 87 FR 80278 and 87 FR 80316.
[19] Pricing and Access Fee Proposal at 87 FR 80269.
[20] We define "price fidelity" as the accuracy with which prices reflect the fundamental value of a security. Price fidelity increases as tick sizes decrease because smaller increments allow for more precision and granularity in setting market prices.
[21] This is not intended to be an exhaustive list of factors. We recommend that the precise metrics and threshold values should be determined in consultation with industry experts and academics.

order book interactions cannot feasibly be encapsulated by a single factor.[22] Quoted spread is one-dimensional and does not provide sufficient context for determining the optimal tick size. For instance, a stock which consistently trades with a penny spread but only has a single round lot posted on the bid or offer may not attract sufficient demand for increased price fidelity from market participants to warrant a reduction in its tick size. By comparison, if material size was present at the National Best Bid and Offer ("NBBO") or a significant proportion of executions were occurring at sub-penny prices, this would be a clear indication of fierce order book competition and interest to tighten the spread and trade in smaller price increments. The SEC recognized these additional factors when adopting Rule 612 and should consider altering the criteria for selecting tick sizes to ensure that only stocks which are truly tick-constrained or tick-excessive are targeted.[23] As the Tick Size Pilot demonstrated, market quality and efficiency deteriorate when tick sizes are mismatched with the character of the market for a security. Accordingly, we believe that the Commission should be circumspect and judicious in determining the criteria for each pricing increment and narrowly define tick-constrained and tick-excessive securities to avoid assigning incongruent tick sizes, which are either too small or too large.

Tick Size Bands. *Contingent upon using apt criteria for assigning tick sizes, as discussed above, BlackRock recommends that the Commission modify the proposed changes to Rule 612 to limit tick sizes for securities priced greater than $1.00 per share to three increments which would be initially set at $0.05, $0.01, and $0.005 (with a potential reduction to as small as $0.002 if warranted after observing the effects of a $0.005 tier)*. We believe that our proposed tick size bands—coupled with revised criteria for their application—would represent a more measured approach to pricing increments that the market could more seamlessly integrate.

BlackRock agrees that introducing a sub-penny tick size for tick-constrained securities is likely to boost competition and opportunities for price improvement, resulting in a better trading environment. However, as the Commission recognized in proposing Regulation NMS, when "the pricing increment for equity securities decreases beyond a certain level, the potential costs to investors and the markets may increase and could, at some point, surpass any potential benefit of permitting securities to be quoted in finer increments."[24] We believe that the universe of tick constrained securities is substantially smaller than the 4,355 NMS stocks that the SEC has earmarked for receiving a tick size less than $0.01.[25] The fact that the economic analysis lacked conviction regarding the proposal's effect on securities which would receive a $0.005 tick size strongly suggests that NMS stocks with quoted spreads between $0.016 and $0.04 are not tick-constrained.[26] As the full effects of establishing multiple sub-penny tick sizes (i.e., $0.001, $0.002, and

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[22] We use "tick-excessive" to describe securities which have tick sizes that are too small, creating an excessive number of price increments between the best bid and offer.
[23] Pricing and Access Fee Proposal at 87 FR 80279.
[24] SEC, Regulation NMS, Rel. No. 34-49325 (Feb 26, 2004) *available at* https://www.sec.gov/rules/proposed/34-49325.htm.
[25] Pricing and Access Fee Proposal at 87 FR 80316.
[26] For the 22% of stocks that would receive a $0.005 tick size under the proposal the effect of the proposal is less certain, Pricing and Access Fee Proposal at 87 FR 80317.

$0.005) on the market ecosystem are unknown and untested, it is possible that the unforeseen or secondary consequences from this novel regime may detrimentally harm market quality. As such, we believe it would be prudent to refrain from introducing multiple sub-penny increments until an empirical analysis can be conducted to determine whether further additions are necessary. The consolidation of three sub-penny pricing increments into a single tier would reduce complexity and make the proposal easier to implement. The removal of two tick tiers and the utilization of more stringent, and tailored, tick categorization criteria would subject fewer securities to a sub-penny tick size and limit any negative consequences of reducing tick sizes such as increased message traffic. A $0.001 tick size would be a drastic change from existing pricing increments which we believe will result in a substantial expansion of quote fragmentation, "pennying" behavior, and flickering quotations if implemented broadly.[27] The removal of the $0.001 pricing increment also greatly simplifies the proposal because this would eliminate the need for a 5 mil access fee cap (which is discussed further below). As to setting the exact amount of the sub-penny tier, we believe that there may be compelling grounds for establishing a sub-penny tick size tier smaller than $0.005 in the future (potentially as small as $0.002, which is sufficiently differentiated from the current standard of $0.01). However, it would be prudent for the SEC to first implement and observe the effects of $0.005 tick size and consider whether further reductions are warranted and supported by the resulting empirical evidence. We believe that taking an incremental approach for sub-penny tick sizes would prove less disruptive for markets and would likely result in a more justified and optimal tiering structure. Nevertheless, even if forthcoming data provides support for an eventual reduction of the $0.005 sub-penny tier, we believe that only one such tier would ever be needed at a given time for the reasons expressed above.

The SEC should adopt a tick size which is larger than $0.01 to improve market quality for securities where a penny pricing increment is diminutive. The Commission has previously raised the concern that "if orders lose execution priority because competing orders step ahead for an economically insignificant amount, liquidity could diminish."[28] Securities with high prices or wider quoted spreads may currently suffer from this tick-excessive condition. Wider tick sizes for these stocks would mitigate the concerns we noted previously around quote fragmentation, pennying behavior, and fleeting quotations. Larger pricing increments would also lower costs and spreads by facilitating the accumulation of liquidity at more efficient price intervals. A recent working paper published by the staff of the SEC's Division of Economic and Risk Analysis found that for "stocks with very wide spreads (i.e., 15¢+) a 5¢ tick appeared to offer superior market quality to a 1¢ [tick]."[29] The authors credited this improvement to narrower quoted and effective spreads, lower trading costs, and greater display size. The study also observed that

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[27] There are other slight variations to what is typically referred to as "pennying," but it commonly refers to the process of acquiring order priority on a trading venue by improving the best bid or offer by an economically insignificant amount.
[28] SEC, Regulation NMS, Rel. No. 34-51808 (June 9, 2005), 70 FR 37553 (June 29, 2005) *available at* https://www.sec.gov/rules/final/34-51808.pdf.
[29] Yashar Barardehi, Peter Dixon, Qiyu Liu, and Ariel Lohr, Tick Sizes and Market Quality: Revisiting the Tick Size Pilot (working paper, Nov. 28, 2022) *available at* https://www.sec.gov/files/dera_wp_ticksize-pilot-revisit.pdf.

wider ticks sharply reduced cancel-to-trade ratios, which is consistent with the premise that a $0.01 tick size for these securities elevates message traffic and increases the incidence of flickering quotations. The economic analysis from the proposal also supports establishing a $0.05 tick for wider spread stocks because "the prevailing effect of reducing the tick size [at the conclusion of the Tick Size Pilot] was to increase fragmentation of liquidity and the risk of pennying which made trading more costly leading to wider spreads."[30] Affirmatively ignoring, without justification, compelling evidence in favor of establishing a larger pricing increment of $0.05 for certain securities suggests a selection bias with regard to what data is used by the Commission to make policy decisions. Additionally, adopting smaller tick increments (such as for securities with quoted spreads from $0.016 to $0.04) on inconclusive evidence as to its efficacy while failing to adopt larger tick size increments based on substantial supporting evidence appears contrary to the Commission's stated goal of adopting holistic reform.

Employing a holistic approach to market structure helps to mitigate the unintended consequences and confounding effects which arise when enacting reforms in a reactive and fragmented manner. Our proposed minimum pricing increments of $0.05, $0.01 and $0.005 would provide the Commission with a starting point for developing a comprehensive tick size framework based on empirical observations which improves trading dynamics and could be calibrated through data-driven adjustments to the characteristics of securities across all spread ranges. The Commission could subsequently refine tick sizes so that they are commensurately distinct from one another and more optimally distributed, with each tier being a sufficient and congruent magnitude larger than the previous one. The utility of increments which are too closely spaced is questionable; while not directly comparable to tick sizes, it may be noted that the circulation of Kennedy half-dollars and $2 bills is mediocre relative to other denominations.[31] We would also emphasize that the introduction of a wider tick size for tick-excessive securities counterbalances the market impact from reducing the minimum pricing increment for tick-constrained stocks. For instance, the increase in message traffic which would accompany a $0.005 or smaller tick size would be substantially offset by a reduction in message traffic from securities subject to a $0.05 tick size.

The optimal set of minimum pricing increments is highly dependent upon the criteria used to assign securities to particular tick sizes. Notwithstanding our tick size recommendations, if the Commission elects to impose different criteria and apply new minimum pricing increments (other than a penny) to a broader range of securities, we would propose using more conservative increments to moderate the impact of tick size changes that are both widespread and extreme in nature.

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[30] Pricing and Access Fee Proposal at 87 FR 80320.

[31] *See* Federal Reserve Board, Currency in Circulation: Volume (Oct. 17, 2022) *available at* https://www.federalreserve.gov/paymentsystems/coin_currcircvolume.htm; *See also* United States Mint, Circulating Coins Production (2022) *available at* https://www.usmint.gov/about/production-sales-figures/circulating-coins-production?program=Circulating+Coins&+CirculatingCoinsyears=1207.

Tick Harmonization. *BlackRock recommends that the Commission eliminate its proposed amendments to Rule 612 to apply the minimum pricing increments to trading as well as quoting (colloquially referred to as "tick harmonization")*. While we understand the Commission's concern that Rule 612 may potentially provide a competitive advantage for over-the-counter market centers relative to exchanges and ATSs, we believe that investors would be materially harmed by the loss of price improvement which would be prohibited by tick harmonization. The SEC observes that investors receive approximately $3 billion of price improvement annually due to sub-penny executions which are currently permitted under Rule 612.[32] This is a tangible benefit for investors which would be significantly reduced because liquidity providers are likely to comply with tick harmonization by rounding down to a less favorable price increment. Further, the harmful effects of tick harmonization would be amplified by tick sizes wider than $0.01 as any prevailing price improvement occurring in pennies would also be eliminated. Tick harmonization is inherently incompatible with any effort to optimally calibrate market structure parameters and establish wider minimum pricing increments and, as we note in our discussion on tick size bands, there is evidence that wider minimum pricing increments improves market quality for certain securities.

If the Commission believes that adoption of tick harmonization is necessary, we strongly support the proposed exemptions for midpoint and benchmark executions, such as Volume-Weighted Average Price or Time-Weighted Average Price trades. We believe that this would preserve the valuable price improvement which investors receive today from widely used order types and trading mechanisms. *BlackRock would further recommend amending Rule 612 to add an exemption for large orders which are greater than or equal to $200,000 in market value*. Larger orders have heightened liquidity needs which may require exceptional order handling to achieve best execution. The SEC recognized that larger orders warranted different treatment and appropriately designed an exception for such orders from the Order Competition Rule.[33] We believe there should be an analogous application for tick harmonization because it impairs the execution quality of large orders by restricting traded prices to specific price increments. While large orders are less likely to be traded intra-spread, tick harmonization would prohibit favorable prices which are beyond the NBBO for these orders. For example, consider a hypothetical stock which has a $0.01 tick size and is currently quoted with a bid of $40.00 and an offer of $40.01. Under tick harmonization, a 10,000 share buy order cannot be executed at $40.055 and the investor would be deprived of $0.005 per share of price improvement if the trade instead occurs at $40.06, which is the next allowable price. Additionally, as we noted earlier, such losses would be magnified for wider tick sizes because a larger increment would deprive investors of their ability to execute transactions at more price levels as compared to a smaller one.

Synchronization of Tick Size Revisions. *We ask the Commission to consider ways in which it might align the specific timing elements of the Market Structure Proposals with other existing rules to avoid amplifying systemic operational risk*. As currently proposed, various market structure parameters will be revised at

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[32] Pricing and Access Fee Proposal at 87 FR 80307.
[33] Order Competition Rule at 88 FR 156.

discrepant intervals. For example, round lots are assigned monthly by the MDI rule, Limit Up-Limit Down Tiers are revised semi-annually, and a quarterly Evaluation Period is being contemplated for determining and recalibrating tick sizes. We recognize that market structure parameters must be adjusted periodically to ensure they sufficiently reflect the character of their underlying securities. However, each of these updates has large-scale repercussions for industry resiliency, as many market participants must reconfigure their investment platforms and trading systems to make any modifications effective. Recent events have demonstrated that even the most routine configuration changes can have a deleterious effect on market operations and Regulation Systems Compliance and Integrity entities are not immune from glitches.[34] We believe that divergent update schedules will materially elevate systemic risk since it only requires a single large market participant to create widespread disruption by failing to properly modify their systems. *As such, we recommend that the Commission should reduce the frequency of changes and synchronize the intervals for revising market structure parameters by updating both round lots and tick sizes on a quarterly or semi-annual basis*.

Tick Sizes for New Issues. We ask that the Commission clarify what tick size would apply for a given security in the absence of an established trading history. The proposal is unexpectedly silent on how to assign tick sizes for NMS securities which have been newly issued through a corporate action or an initial public offering. *We believe that it would be more effective if the Commission provided explicit guidance on how to set tick sizes for new issues and suggest that when quotation or pricing data is unavailable, the simplest and most intuitive alternative would be to use specifications which were previously considered to be the standard unit, such as a $0.01 tick size or a 100 share round lot*.

Access Fees. *BlackRock recommends that the Commission consider implementing a tiered structure where access fee caps vary based on measures such as daily trading volume to bolster liquidity and market quality for investors in thinly-traded securities which may warrant a larger fee/rebate*. Analogous to our position on tick sizes, instead of a "one-size-fits-all" model, we believe that markets would be best served by a tiered access fee cap framework where fees for the most liquid securities are reduced, but fees and consequently rebates for illiquid securities are kept constant or increased. We agree with the Commission that access fees are outdated and oversized relative to other trading costs; further, lowering fees would mitigate the detrimental effect of access fees on order routing, price transparency, and market quality in many securities. However, we also recognize that access fees and the rebates that they fund serve an important function in incentivizing liquidity provision for thinly-traded securities and compensating market makers for adverse

[34] Note that the root cause of the market event on January 24, 2023, was an error involving the NYSE Disaster Recovery configuration at system start of day. CNBC, NYSE says Tuesday's trading glitch due to 'manual error' (January 25, 2023) *available at* https://www.cnbc.com/2023/01/25/nyse-says-tuesdays-trading-glitch-due-to-manual-error-.html; NYSE, NYSE Opening Auctions Technical Issue on January 24, 2023 Resolution (January 25, 2023) *available at* https://www.nyse.com/market-status/history#110000531402.

selection.[35] The Commission has previously identified that nearly 40% of all securities trade less than 50,000 shares per day and that a single equity market structure may not adequately serve this segment of the market.[36] Prudent regulation must appropriately address this trade-off and balance the beneficial effect of access fees on liquidity against the potential for market distortions. Although we believe that the current proposal may miss an opportunity to enact more holistic and lasting access fee reform, we concede that, for highly liquid securities, a 10 mil access fee cap reasonably threads the needle between countervailing adverse consequences. Accordingly, under a uniform fee model, we would be supportive of setting the access fee cap at 10 mils. This would have the added benefit of aligning exchange fees with prevailing ATS fees and creating a more equitable competitive landscape across trading venues. However, we believe that the 5 mil access fee cap tier that is being proposed to balance the effect of transaction fees against the corresponding adoption of a $0.001 tick size may be too narrow for thinly-traded NMS stocks and would urge the Commission to eliminate this bucket unless it is assigned based on some measure of liquidity instead of quoted spread. A 5 mil access fee cap would severely curtail exchange liquidity incentives and adversely impact trading centers which currently earn a higher net capture per transaction. Consequently, modifying the proposal to only create a single sub-penny pricing increment of $0.005 (or subsequently $0.002 as discussed above) would constructively address these concerns because it would eliminate the need for a 5 mil access fee cap tier.

Acceleration of MDI Implementation. *BlackRock supports the proposed accelerated implementation of the Commission's December 2020 Market Data Infrastructure rules[37] which redefined "round lots" and added odd-lot information to consolidated market data to increase the transparency of better-priced orders in the market*.[38] As previously noted, we believe that these changes would improve transparency and increase the usefulness of the consolidated tape given the growing prevalence of market activity in sub 100 share quantities.[39] It is our understanding that many investors do not subscribe to proprietary exchange data feeds (which contain odd-lot quotations) so expediting these amendments would help to reduce information asymmetries between those market participants that subscribe to proprietary exchange data feeds and those that do not. Allowing for access to this information, as proposed, would therefore likely result in increased

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[35] *See also* our previous comments on access fees and exchanges rebates: BlackRock, Comment Letter on Transaction Fee Pilot for National Market System ("NMS") Stocks (May 23, 2018) *available at* https://www.sec.gov/comments/s7-05-18/s70518-3701799-162463.pdf.
[36] Division of Trading and Markets, Empirical Analysis of Liquidity Demographics and Market Quality For Thinly-Traded NMS Stocks (Apr. 10, 2018) *available at* https://www.sec.gov/files/thinly_traded_eqs_data_summary.pdf;
SEC Chairman Jay Clayton, Remarks at the Equity Market Structure Symposium Sponsored by the University of Chicago and the STA Foundation (Apr. 10, 2018) *available at* https://www.sec.gov/news/speech/speech-clayton-2018-04-10.
[37] SEC, Market Data Infrastructure, Rel. No. 34-90610 (Dec. 9, 2020) *available at* https://www.sec.gov/rules/final/2020/34-90610.pdf, 86 FR 18596 (Apr. 9, 2021).
[38] Pricing and Access Fee Proposal at 87 FR 80296.
[39] BlackRock, Comment Letter on Market Data Infrastructure, 17 CFR Parts 240, 242, and 249 (May 26, 2020) *available at* https://www.blackrock.com/corporate/literature/publication/sec-market-data-infrastructure-052620.pdf.

pre-trade transparency for both retail and institutional investors and bolster execution quality.

However, we recognize that implementation of the MDI rules regarding publication of odd-lot information is likely a complex and time-intensive undertaking for many market participants because it requires dissemination of multiple levels akin to depth-of-book data feeds. If there are multiple odd-lot quotations priced at or better than the NBBO, the Securities Information Processors ("SIPs") would have to publish this data to subscribers, aggregated at each price level from each exchange. We believe that this represents a consequential departure from how the SIPs function today and is likely to require considerably longer than 90 days to comply.[40] Furthermore, if the SIPs choose not to register as competing consolidators, this may result in added costs for market participants who would need to perform development work to consume this information first from the SIPs, only to replicate that effort again with a competing consolidator. *Therefore, BlackRock recommends that the SEC consider only adding best odd-lot orders to buy and sell ("BOLO") to the SIP, in lieu of accelerating the inclusion of more extensive odd-lot information as defined by the MDI rule*. The addition of BOLO would facilitate better execution quality analysis and supply the price data required by the Order Disclosure Proposal without the painstaking effort of a comprehensive odd-lot implementation. This would likely be faster and simpler for both the SIPs and market participants to adopt, as it conforms more closely to the NBBO data which is currently disseminated on the consolidated tape.

Order Competition Proposal

BlackRock supports market structure modifications that better enable market participants to engage with and compete for retail orders because we believe that a more inclusive and competitive market translates to better execution for investors. Markets become more efficient and price discovery is enhanced when a wide range of buyers and sellers with diverse perspectives are able to interact with one another. We do, however, have concerns about how well the Order Competition Proposal and, in particular, proposed new Rule 615, and the related changes to Regulation NMS, achieve this outcome.[41] The complexity and highly prescriptive nature of qualified auctions, where every element from execution priority to auction duration has been rigorously stipulated is of primary concern to us. A regulatory framework which is too rigid stifles innovation and inhibits the ability of trading venues to create market solutions for retail orders. It also presumes that qualified auctions are the ideal mechanism for fostering competition and trading opportunities with a greater number of market participants. Many investment firms are likely to find it difficult to interact with qualified auctions which expire in fractions of a second or

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[40] *See* Bob Books, Chair of the CTA/UTP Operating Committees, Comment Letter on Pricing and Access Fee Proposal (March 29, 2023) *available at* https://www.sec.gov/comments/s7-30-22/s73022-20161925-330764.pdf.

[41] In the Order Competition Proposal, the Commission is, among other amendments, proposing new Rule 615 of Regulation NMS, that would require that certain orders of individual investors be exposed to competition in open market auctions, before such orders could be executed internally by trading centers that restrict order-by-order competition.

overlap in duration when multiple retail orders for the same security are received concurrently.

Retail Liquidity Programs Alternative. _We believe that an efficient and effective alternative to the proposed qualified auction requirement would be to foster the development of existing Retail Liquidity Programs ("RLPs") and midpoint matching facilities by eliminating structural impediments to the broader adoption of these mechanisms_. For example, in lieu of the proposed qualified auction mechanism, the Commission could allow venues to display sub-penny retail prices or establish order priority rules which promote retail liquidity and attract retail order flow.[42] The SEC has identified an abundance of midpoint liquidity, which would provide retail orders with competitive executions where investors pay no spread, resting on exchanges and ATSs.[43] According to CAT data, nearly 75% of the shares which wholesalers executed at prices less favorable than the midpoint could hypothetically have been traded against a resting midpoint order.[44] At the moment, this is exceedingly unlikely to happen because wholesalers are not aware of the existence of non-displayed midpoint orders or lack transparency about the price or size available in an RLP. Reforms that remove obstacles which prevent retail orders from effortlessly accessing this liquidity may be easier to implement and will be less disruptive than establishing qualified auctions. Market participants already use RLPs and midpoint matching facilities as these venues are more compatible with their existing trading workflows. Further, by enhancing the visibility of midpoint and better priced retail liquidity, wholesalers should be compelled by their duty of best execution to route retail orders to these facilities if they are not willing to internalize them at a comparable price, obviating the need for an explicit order competition rule.

Broker-Dealer Order Routing. We are also concerned about the unintended harms which may stem from adopting paragraph (f)(2) of Rule 615. This requirement seeks to prevent circumventive behavior by prohibiting broker-dealers from knowingly submitting, or enabling an order to be submitted, to the continuous order book of a trading center where they have routed a segmented order. While we appreciate the issues that this prohibition seeks to address, we are concerned that this requirement may not give due consideration to the organizational structure of broker-dealers who may engage in multiple business activities under the same entity. Some broker-dealers who manage segmented orders for retail clients may also handle orders for institutional customers; wholesalers who internalize retail orders may also operate as exchange market makers. Such entities may refrain from routing their non-retail activity to a trading center where they have submitted a segmented order to avoid violating Rule 615(f)(2), even if these businesses

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[42] *See e.g.*, SEC, Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule, Release No. 34-96306 (May 6, 2022) *available at* https://www.sec.gov/rules/sro/memx/2022/34-94866.pdf; SEC, Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 7.44-E Relating to the Retail Liquidity Program, Release No. 34-96741 (January 24, 2023) *available at* https://www.sec.gov/rules/sro/nysearca/2023/34-96741.pdf.
[43] We note that the Commission created an exception to Rule 615 because it deemed that qualified auctions would not be necessary to obtain a competitive price for segmented orders which receive midpoint executions.
[44] Order Competition Proposal, Table 20 at 88 FR 211.

operated independently of each other with sufficient information barriers. This market avoidance would have a deleterious effect on exchange liquidity and unfairly discriminates against non-retail investors whose orders may see a deterioration in execution quality. Further, it may counterintuitively harm competition for qualified auctions by removing legitimate contra-side liquidity from the continuous order book. *BlackRock, therefore, recommends either eliminating Rule 615(f)(2) entirely or modifying it so that broker-dealers are permitted to route orders to an exchange if they have appropriate information barriers or segregation between the business units which handle segmented orders and other trading flows*.

Best Execution Proposal

Factors Used to Determine Best Execution. Best execution has long been a crucial obligation of broker-dealers, which protects investors and ensures fair and equitable dealings in less transparent markets or where conflicts of interest may be involved. We believe that the Financial Industry Regulatory Authority ("FINRA") and Municipal Securities Rulemaking Board ("MSRB") best execution rules have served investors and markets well. However, if the Commission decides to promulgate its own best execution rule, *BlackRock recommends explicitly incorporating additional determinants of best execution in Rule 1100 by replicating the well ingrained considerations outlined in FINRA Rule 5310 and MSRB Rule G-18*. As the Commission has previously stated, the duty of best execution requires a broker-dealer to obtain the *most favorable terms* reasonably available for its customer orders.[45] While price is one primary consideration, there are many other factors which drive best execution such as—but not limited to–the size and type of transaction, speed of execution, trading characteristics of a security, availability of market data, and clearing costs.[46] For instance, an institutional investor might be more concerned about the potential for information leakage and minimizing the impact on future orders than receiving the lowest possible price on a given transaction. Although the proposal acknowledges these elements in the policies and procedures which broker-dealers need to establish, we believe that the proposed language for the best execution standard insufficiently addresses these factors and places undue emphasis on price.

Best Execution Obligation for Institutional Customers. *In order to promote best execution of customer orders, we would recommend that the SEC eliminate the exception for institutional customers completely or, at a minimum, modify the exemption so that it only applies when broker-dealer quotations are obtained in competition*. The proposed rule notably deviates from FINRA's existing best execution guidance by introducing an exemption from the best execution standard when an institutional customer executes an order against a broker-dealer's quotation. We believe that this clause is antithetical to the need for best execution in less transparent markets. In fixed income markets, where orders are typically traded principally against a broker-dealer's risk or inventory, transacting on a quotation is the dominant style of execution. As such, proposed Regulation Best

[45] Regulation NMS at 70 FR 37538.
[46] This is not intended to be an exhaustive list of the factors which need to be considered in determining whether reasonable diligence has been used in achieving best execution.

Execution would largely not apply for institutional customers trading fixed income securities. However, market participants in fixed income benefit more from a best execution rule because they do not have access to the same amount of price transparency as NMS stocks. In the Best Execution Proposal, the SEC remarked on the structural disparity in price transparency between the markets for NMS stocks and fixed income securities by highlighting several distinguishing characteristics, which included (1) the lack of public post-trade dissemination of government securities prices; (2) a 15-minute publication delay of FINRA Trade Reporting and Compliance Engine data following trade execution; and (3) the highly decentralized nature of fixed income markets which creates information asymmetry between dealers and customers.[47] Further, FINRA has also noted that even the prices which are displayed on electronic trading platforms "may not be the presumptive best price of that security for best execution purposes, especially for securities that are illiquid or trade infrequently."[48] Although there are circumstances when it is appropriate and prudent for regulations to treat institutional market participants differently than individuals, in this instance, all investors are affected by the less transparent nature of the fixed income market. The Commission's analysis of fixed income transaction costs, which shows that the price dispersion between institutional and retail transactions against dealer executions is comparable, supports this premise.[49] In fact, for transactions in agency, asset-backed, mortgage-backed, and municipal securities, larger trades were found to experience a greater degree of variation in execution quality than retail-sized orders. The Commission notes that institutional market participants commonly utilize request for quote ("RFQ") mechanisms on electronic trading platforms to solicit prices from broker-dealers. We believe that institutional investors obtain ample insight on the overall demand and supply available in the market when they receive quotations in competition from multiple broker-dealers over RFQ platforms. However, institutional customers may often still seek to trade privately against a single dealer's quotation for a large or more sensitive transaction, rather than put the order out for competition. In these scenarios, a best execution rule would continue to serve as an invaluable investor protection.

Scope of Best Execution Obligation. *BlackRock believes that the Commission should consider, and articulate, how the Best Execution Proposal would interact with the pending Dealer Proposal*, which would apply new qualitative and quantitative standards to determine whether an entity is engaging in activity that would be deemed to be acting as a dealer as part of a regular business. As we, and many other commenters to the Dealer Proposal, have indicated, these criteria may capture private funds or large investors as dealers, even though they do not operate as market makers, due to their investment activity in correlated instruments or their aggregate trading volumes.[50] It's unclear how best execution should apply to

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[47] Best Execution Proposal at 88 FR 5445.
[48] FINRA, Regulatory Notice 15-46 at 8 (Nov. 2015) *available at* https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.
[49] Best Execution Proposal, Table 17 at 88 FR 5513.
[50] BlackRock, Comment Letter on Proposed Rulemaking on Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer (March 16, 2023) *available* at https://www.blackrock.com/corporate/literature/publication/blackrock-dealer-

entities that neither perform broker-dealer functions nor carry customer accounts in the traditional sense. Additionally, the broader adoption of all-to-all trading in fixed income markets creates multiple, potentially irreconcilable best execution obligations for any funds that would have to register as dealers should the Dealer Proposal be adopted. All-to-all trading is a protocol that enables a market participant to trade directly with another market participant without the intermediation of a broker-dealer. In an all-to-all trading environment, a dually-regulated fund may be construed to simultaneously have best execution obligations to its clients as a fiduciary and to its counterparty customers as a dealer. The interests of these two parties are diametrically opposed and irreconcilable from the perspective of best execution. Markets would become less resilient, transaction costs would increase, and transparency would be diminished if funds seek to avoid this conundrum by reducing their usage of all-to-all trading protocols.[51] These complications stem from the potential overreach of the Dealer Proposal in classifying some funds as broker-dealers and is another reason why the dealer definition should be modified so that only the entities who genuinely act as market makers are included.

Introducing Brokers Employing Multiple Executing Brokers. In response to the Commission's question in the proposal regarding the use of multiple executing brokers by introducing brokers, *we recommend that the Commission amend proposed Rule 1101(d)(2) to permit the application of the relevant exemption to introducing brokers that have entered into arrangements with multiple unaffiliated brokers or dealers that have agreed to handle and execute on an agency basis all of the introducing broker's customer orders*.[52] Rather than appointing an exclusive executing broker, introducing brokers typically have arrangements in place with multiple broker-dealers to provide for diversification in their execution options and ensure the resiliency of their operations. We understand that part of the policy rationale behind the proposed definition of "Introducing Broker" is exclusion from the full scope of best execution obligations for those broker-dealers that do not exercise any discretion with respect to how their customer orders are handled and executed, beyond the selection of the executing broker. This rationale is as equally relevant with respect to introducing brokers that have delegated all order handling and execution to multiple unaffiliated executing brokers, as opposed to one single executing broker. Accordingly, the business model of an introducing broker with multiple executing broker arrangements does not present any of the same circumstances that the Commission identified as warranting the full application of Rule 1101.

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definition-letter.pdf; SEC, Comments on Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer (Dec. 5, 2022) *available at* https://www.sec.gov/comments/s7-12-22/s71222.htm. *See e.g.*, letter by Jennifer W. Han, MFA and William C. Thum, SIFMA AMG.

[51] Alain Chaboud, Ellen Correia Golay, Caren Cox, Michael Fleming, Yesol Huh, Frank Keane, Kyle Lee, Krista Schwarz, Clara Vega, and Carolyn Windover, All-to-All Trading in the U.S. Treasury Market (October 2022) *available at* https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1036.pdf.

[52] *See* Best Execution Proposal, Request for Comment Question 112 asking "Does an introducing broker typically have multiple executing brokers or does it typically have an arrangement with only one executing broker to handle and execute all of its customer orders?", 88 FR 5478.

Phased Compliance and Implementation Sequencing of Market Structure Proposals

Given the far-reaching and fundamental nature of the proposed changes, BlackRock recommends that the Commission consider implementing the Market Structure Proposals through a sequenced approach with phased compliance dates. We believe that simultaneous implementation of all four proposals will leave investors and market participants vulnerable to unanticipated and unintended consequences, with the potential to substantially—and unnecessarily—disrupt markets and impose considerable investor harm.

Strategically staggering, or staging, the adoption of the proposals would provide the Commission, industry, and investors with the necessary time to assess the distinct effect of each proposal, analyze their cumulative impacts on the market, and make any modifications that may be needed to address unforeseen negative externalities that a proposal creates. As previously mentioned, we believe that the recommended sequential approach with respect to rule adoption should also contemplate, and incorporate, the related Dealer Proposal and Definition of "Exchange" Proposal, both of which are inextricably related to the Market Structures Proposals. We also recommend that the Commission consider the potential impact that the shortening of the securities transaction settlement cycle might have on resourcing and implementation prior to adopting potentially intersecting portions of the Market Structure Proposals.[53]

To that end, if the Commission decides to adopt the Market Structure Proposals (substantially as proposed), we recommend it first adopt the Order Disclosure and the Pricing and Access Fee Proposals before moving to adopt the Order Competition and the Best Execution Proposals. We believe that there is likely to be some post-implementation fine-tuning needed around designating new tick sizes and that it would be helpful to observe how the new tick size and access fees operate in isolation of other market structure changes. Additionally, even within the Pricing and Access Fee Proposal, we note that the acceleration of MDI round lot definitions will impact the quoted spreads for securities priced greater than $250. The NBBO for many high-priced stocks would be set by orders of 40 shares or less which is likely to reduce spreads in these securities. As such, it would be logical to proceed with the adoption of round lot changes first, before assigning tick sizes, which are determined based on quoted spreads, to securities.

Further, due to the sheer magnitude of the market impact from these proposals, we recommend that Commission staff should produce detailed analyses on the cumulative and individual effects of the Proposals no later than 24 months after implementation. The Commission previously has required its staff to conduct such post-implementation analyses in conjunction with their adoption of other far-reaching market structure rulemakings, and we believe that the Proposals' scope

[53] SEC, Shortening the Securities Transaction Settlement Cycle, Rel. No. 34-96930 (Feb. 15, 2023) *available at* https://www.sec.gov/rules/final/2023/34-96930.pdf.

and breadth warrant similar treatment.[54] The staff report should include, among other relevant material (1) discussions of whether, and how, the final rules are—or are not—meeting their objectives, identification of any unintended consequences and interactive effects and include any recommendations for amendments to improve/correct the function of the rules, (2) consolidated feedback from market participants on efficiency and effectiveness of implemented changes, and (3) market data that supports and explains the statements, conclusions and recommendations in the report.

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BlackRock thanks the Commission for the opportunity to comment on the Market Structure Proposals. Overall, we believe that the intent of the proposals has the potential to improve certain aspects of the national market system and result in an improved investor experience in the form of better executed transactions. We welcome any additional questions or further discussion.

Sincerely,

Hubert De Jesus
Managing Director, Global Head of Market Structure and Electronic Trading

Samantha DeZur
Managing Director, Global Public Policy Group

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[54] *See e.g.*, SEC, Securities Transaction Settlement Cycle, Rel. No. 34-80295 (Mar. 22, 2017) *available at* https://www.sec.gov/rules/final/2017/34-80295.pdf.