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**By Email**

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
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**Re: Rule Proposal No. 34-96493, File No. S7-29-22, Disclosure of Order Execution Information**

**Re: Rule Proposal No. 34-96494, File No. S7-30-22, Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders**

**Re: Rule Proposal No. 34-96495, File No. S7-31-22, Order Competition Rule**

**Re: Rule Proposal No. 34-96496, File No. S7-32-22, Regulation Best Execution**

Dear Securities and Exchange Commission,

At the very beginning, I would like to thank the Commission for its involvement and support for the initiatives focused on market transparency and fairness for all investors. I fully support the proposed rules (S7-29-22, S7-30-22, S7-31-22, S7-32-22), as I believe it is a step in right direction to fix important issues with current market structure.

**Best Execution**

To guarantee the protection of all investors, each market participant should be safeguarded by competition and the duty of best execution. I strongly believe, that rules and regulations should stimulate growth of efficient financial markets, where order flow is acquired by participation in the process of price discovery and competition. This can only be guaranteed when orders are exposed to price quotations available in the national markets. Off-exchange settlements are the exact opposite of that!

**Conflict of interest**

Current market structure allows for routing orders to wholesalers based on payment for order flow (PFOF). Broker-dealers perform routing decisions most advantageous to the broker-dealer, not investor. Internalization of orders is in a direct conflict with the duty of best execution. It supposed to be "best execution", not "good enough execution". Wholesalers claim that investors are getting better prices. If they are truly providing competitive execution quality and price improvement, there is every reason to believe they would still do so in the face of open competition. Doug Cifu -- Virtu Financial CEO -- during an interview[1] from June 8, 2022 with CNBC Television claimed that "fundamentally a wholesalers can provide infinite liquidity at the NBBO or inside price". Market price of an equity should reflect a real-time supply and demand. If demand is higher than supply, the price should rise to mirror that. In the situation when supply is greater than demand, the price should fall. What is the point of a market if one has an infinite liquidity? Is that really a market if ticker price does not reflect reality and companies like Virtu can suppress the price movement at they will? Each ticker has an authorized number of equities which is finite. If one has unlimited supply ... what are they offering? With current market structure, price discover and order competition does not exist for all investors. In 2004 Kenneth Griffin -- Citadel LLC CEO -- described internalization as "one of the greatest threats to price discovery in financial markets"[2]. Unfortunately, every negative aspect of internalization described by Mr Griffin 19 years ago became reality. At the same time, it is truly sad that in 2023 fair and competitive market is the last thing that financial industry wants to achieve. Those who favor the status quo are hostile to any improvements that would jeopardize their own business model or the business models of their members. It is important to keep in mind that many of these companies has felt differently about these issues in the past.

"As more and more brokers engage in the practice of internalization, bid-ask spreads in the public markets will continue to be wider than they otherwise would, quoted liquidity will continue to fall and the role and value of the public markets will be greatly diminished. Furthermore, as bid-ask spreads widen in response to internalization, aggressive broker-dealers will be able to internalize an ever increasing portion of their order flow, sending only the most challenging of orders into the market place for execution - and only further worsening the situation corroding the value of the market. In the long run, unfettered internalization will result in substantially poor executions for all retail and institutional investors. The SEC's efforts in other areas have contributed to narrower spreads in recent years; addressing internalization in the markets will have the effect of narrowing spreads even further."[2]

"We believe that the potential long-term impact of internalization is so corrosive to our national market system that the Commission should take every possible step to curtail this business practice. Indeed, the dramatic fall in processing costs in recent years almost completely eviscerates the arguments in favor of internalization. Therefore, we believe the Commission ultimately should require all market participants to route their order flow to any one of the regulated securities exchanges or alternative trading systems."[2]

**Lit markets, order competition, true price discovery, fairness, transparency**

I fully support eagerness of the Securities and Exchange Commission to level the playing field by exposing orders of individual investors to competition in fair and open auctions. <u>However, I would like to point out that broker-dealer should be obligated to send orders DIRECTLY to open actions or lit exchanges first. In other words, orders should NOT be routed to open auctions or lit</u>

1 https://www.youtube.com/watch?v=K064hJQ7fdI
2 https://www.sec.gov/rules/proposed/s71004/s71004-436.pdf

exchanges through third parties such as wholesalers. No one should have an advantage of seeing those orders before others do. As far as I understand, current rule proposal would allow it. The Commission should address the unfair information advantage and change the rule accordingly. In addition, I believe that every investor should be treated equally and there should not be any distinction between individuals. The market should be fair for everyone. Allowing as many orders as possible is beneficial for competition. Therefore, I propose removal of the condition about average daily number of trades executed in the NMS stocks being less than 40 in each of the six preceding calendar months. Would the auction mechanism also apply to orders that cannot be filled instantly because of the buy / sell limit order being too low / high? In other words, would the auction mechanism apply to buy / sell orders created today but filled e.g. in five days? In my opinion, it should. At the same time, I would like to encourage Commission to consider a simpler solution by putting all orders on lit exchanges where true price formation takes place. Simpler rules are more difficult to game than complex rules. I strongly believe that relying on healthy competition and best execution responsibilities will greatly improve trade execution quality. There are opinions that such solution would limit "commission free trading", hence limit access to market for average investors. I would like to point out, that "commission free trading" is an oxymoron. There is no such thing as "free trading", which was clearly presented by the research performed by Professor Christopher Schwarz and Professor Philippe Jorion from University of California. Data presented in Table 1 in their comment[3] from March 29, 2023 to rule proposal S7-32-22 show, that broker-dealers engaged in payment for order flow (PFOF) provide worse quality of order execution in comparison to orders which were not influenced by PFOF. Aren't broker-dealers obligated to provide "best execution"? In addition, those orders do not participate in building demand pressure as they are internalized, meaning they do not take part in true price discovery following supply and demand principle. As proven above, "commission free trading" was never free, just the costs were hidden. It directly contradicts market transparency which is the foundation for free and fair markets. The costs of participation in the markets should be known up front to the investors. People should not be mislead into thinking that they have been offered free service. If something is "free", this means you are a product! In my opinion, the market structure issues identified by the Commission would be best addressed by prohibiting PFOF. Following countries have taken steps to eliminate such practice: UK, EU, Canada, Australia and Singapore. Personally, I would gladly pay known up front commission to be 100% sure that my orders are executed on lit exchanges and they participate in true price discovery based on supply and demand mechanics.

Being "fair" by definition implies handling two things in the same way. Why in free and fair markets odd lots are not being treated in the same way as round lots are? Nowadays, odd lots play vast and an important role in financial markets. Odd lots should affect the price. I would like to encourage the Commission to include odd lots in the calculation of the NBBO. At the same time, I fully support the inclusion of odd lots information in the SIP and applaud the Commission's efforts in providing greater transparency. I am also in favour of standardization of tick sizes for quoting and trading of NMS stocks across all trading venues. Everyone should trade according to the same rules. No one should be granted an unfair advantage over others. Moreover, I would like to recommend the Commission to be more specific when it comes to

3 https://www.sec.gov/comments/s7-32-22/s73222-20161913-330740.pdf

writing rules. Unambiguous language in the rule structure can create confusion and might be used as a loophole in the future, which eventually might lead to litigation and difficulties in rule enforcement. How the Commission plan to measure "reasonable amount of available liquidity at NBBO"? What is the definition of "reasonable amount"? Such language gives a lot of room for interpretation and should be avoided. Clearly defined rules is what is needed. Additionally, I would like to ask the Commission to look critically towards exchange rebates and inducements as it is no different than PFOF. Such practices should be eliminated. Orders should be executed following best execution rule.

Every law the Commission passes is only as good as the enforcement that backs it. Rules without enforcement are worthless.

I would like to thank the Commission for the opportunity to comment on this critically important issues. Other relevant aspects that are not part of proposed rules are highlighted in the appendix to this letter.

Best regards,
Michal Dudek, MSc, PMP

# APPENDIX

Other pertinent issues that the Commission should investigate:

1. Short positions should be reported just like long ones.
2. Why is it allowed to hide short interest positions in derivatives such as swaps and options? Why short interest can be hidden using overseas companies?
3. Transparency needs to be enforced in the whole market including derivatives. Why CFTC can decide to stop reporting swap positions for many years?
4. According to DTCC Executive Director, Mr Artem Korenyuk, about 3% of all trades fail DAILY[4] (timestamp 02:48)!
5. If individual investor is not able to buy a security and FTD cash to a broker ... why it is allowed the other way round?
6. Institutions which FTD should be known by the public.
7. Institutions which FTD on regular basis should be banned from the market.
8. FTD data should be reported to the public by the Commission as soon as the agency gets the data, without the delay.
9. FTDs should be banned as with current technology it is an archaic and unnecessary "solution".
10. FTDs loopholes are being used to manipulate price discovery. There are companies which are on RegSHO list for months without any effect on the settlements.
11. An institution should NOT be allowed to sell a security if it is NOT in its possession.
12. Stop naked short selling, such practice destroys price discovery and manipulates real supply and demand. No exemptions.
13. Market offenders should return everything that they have illegally earned + extra high fee on top of that.
14. Market offenders should be known by the public.
15. Regular market offenders & manipulators should be banned from the market. There are companies that were caught breaking the rules many times and are still in the business[5].
16. Regular / random audits should replace the "self-regulatory belief" of no wrongdoing. Audits should be a new standard.
17. XRT ETF has 7.4M shares outstanding. Today, March 31, 2023 there are 22.38M shares sold short[6]. This gives over 300% of SI. Why such predatory behavior is allowed?
18. People who manipulate public should be held accountable. Below I present just a few obvious examples
    - On September 9, 2021 Anthony Chukumba said on CNBC "Sell the stock first, ask questions later" about GameStop stock[7] (timestamp 04:30).

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4 https://www.dtcc.com/dtcc-connection/articles/2022/august/02/improving-settlement-rates-by-ignoring-them

5 https://files.brokercheck.finra.org/firm/firm_116797.pdf

6 https://www.wsj.com/market-data/quotes/etf/XRT

7 https://www.cnbc.com/video/2021/09/09/gamestops-earnings-call-was-absolutely-shameful-loops-chukumba.html

- In October, 2021 Mark Minervini was encouraging public to invest into Upstart Holdings, Inc., even though he didn't know what the company does! The price plunged in the following days and months after the interview[8].
- On February 8, 2023 Jim Cramer said that Silicon Valley Bank stock (SIVB) is "still cheap" and has "room to run", the bank collapsed[9] (timestamp 07:00).
- On March 10, 2023 Jim Cramer tweeted "FRC is new focus... very good bank", the stock of First Republic Bank (FRC) has plunged 60%+ the next day[10].

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8 https://www.youtube.com/watch?v=E_YIZyVzymA

9 https://www.youtube.com/watch?v=gdg2AD0pouY

10 https://twitter.com/jimcramer/status/1634197816359747585