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March 31, 2023

**Via Electronic Submission (rule-comments@sec.gov)**

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

**Re: File No. S7-32-22; Release No. 34-96496; Regulation Best Execution File No. S7-31-22; Release No. 34-96495; Order Competition Rule  
File No. S7-31-22; Release No. 34-96495; Order Competition Rule  
File No. S7-30-22; Release No. 34-96494; Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders  
File No. S7-29-22; Release No. 34-96493; Disclosure of Order Execution Information**

Dear Ms. Countryman:

This correspondence is submitted for your consideration in connection with the above referenced Releases and associated rule proposals (the “Proposed Rules” or the “Proposals”).<sup>1</sup>

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<sup>1</sup> Exchange Act Release No. [96496](#), 88 FR 5440 (Jan. 27, 2023) (“Regulation Best Execution”); Exchange Act Release No. [96495](#), 88 FR 128 (Jan. 3, 2023) (“Order Competition Rule”); Exchange Act Release No. [96494](#), 87 FR 80266 (Dec. 29, 2022) (“Minimum Pricing Increments”); Exchange Act Release No. [96493](#), 88 FR 3786 (Jan. 20, 2023) (“Order Execution Information”).

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## I. INTRODUCTION

Cambridge Investment Research, Inc. (“CIR”), a broker-dealer registered through the Financial Industry Regulatory Authority (“FINRA”), and its affiliated Securities and Exchange Commission (“SEC” or the “Commission”) registered investment advisory firm, Cambridge Investment Research Advisors, Inc. (“CIRA”), appreciate the opportunity to comment in connection with the Proposed Rules. CIR and CIRA are herein referred to collectively as “Cambridge.”

Cambridge is among the largest, independent broker-dealers/registered investment advisors in the country. Cambridge is a private financial solutions firm located in Fairfield, Iowa, focused on serving independent financial professionals and their investing clients. Cambridge supports over 3,800 independent contractor, financial professionals nationwide. Those financial professionals, in turn, serve hundreds of thousands of investors.

Independent broker dealers (“IBDs”) and registered investment advisors (“RIAs”) with whom independent financial professionals are required by law to affiliate, operate in a highly regulated environment in which regulators such as the SEC, the Financial Industry Regulatory Authority, Inc. (“FINRA”) and state securities agencies require compliance oversight and close supervision of financial professionals by their IBD and RIA.

This regulatory supervisory structure ensures protection of investors’ interests through the creation of guardrails and an enforcement regime that necessarily drive compliant conduct. However, creation of unclear, overly complex, pervasive or impractical controls fails to protect investors and instead potentially increases their costs and potentially drives their independent financial professional out of this industry, which then jeopardizes the future of the IBD business model as it exists today.

## II. EXECUTIVE SUMMARY

The Proposed Rules suggest fundamental changes to the equity market structure and appear to exceed the scope contemplated by Regulation NMS. Notwithstanding the sweeping, proposed modifications and associated market and market participant impact, the Proposed Rules lack sufficient analysis to assess their interrelation and the impact that interrelation has on the markets and market participants.

Specifically, the Proposals reflect wholesale changes to the manner in which many orders are handled and executed today. Further, the Proposals directly or indirectly impact nearly every rule promulgated under Regulation NMS. These sweeping changes flow from the SEC’s untested view that better prices for investors drive competition among venues providing trade quotations rather than over-the-counter (OTC) market makers.

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Because at least one of the Proposals applies to *all* securities transactions (e.g., equities, fixed income, private securities, digital assets), while the others apply only to national market system (NMS) stock, the Proposals cannot be viewed in isolation. As an example, the changes to ticket sizes contemplated in the Minimum Pricing Increments Proposal significantly impacts all of the Commission’s calculations underlying its economic analysis to support the Order Competition Rule Proposal. However, the Commission does not appear to have evaluated this critical interplay.

As a result of this failure to consider the critical interplay among the proposed rules changes, the Commission denies to the public data and analysis sufficient to frame informed comments. Instead, with respect to the Minimum Pricing Increments Proposal, the Commission states in the Order Competition Rule Proposal that it “encourages commenters to review that proposal to determine whether it might affect their comments on this proposing release.” Exchange Act Release No. [96495](#), 88 FR 128, n. 147 (Jan. 3, 2023) (“Order Competition Rule”).

Against this backdrop, Cambridge respectfully suggests that the sweeping, pervasive, and interrelated nature of these Proposals compels more transparency into the data and analysis performed by the Commission so as to facilitate an informed, collaborative dialogue among industry participants regarding the Proposals.

Participants should always consider market enhancements. However, it is important that changes claimed to be “enhancements” do not inadvertently diminish benefits available to retail investors. For example, the broad availability of commission-free trading, the speed and quality of execution and the significant price and size improvement associated with retail orders should not be disrupted without clear and compelling evidence of the benefits of proposed changes to the markets.

### III. OVERVIEW OF RULE MAKING EFFORTS

In 1968, the SEC first established a regulatory framework concerning best execution. The current Rule Proposals appear intended to enhance or amend these prior efforts to impose a best execution regulatory framework on brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers. According to the Commission’s Press Release in connection with the Proposed Rules, the Commission claims that the Rule Proposals will “help ensure that brokers have policies and procedures in place to uphold one of their most important obligations: to seek best execution when trading securities, whether equities, fixed income, options, crypto security tokens, or other securities.”

The Rule Proposals require broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to comply with the proposed best execution standard. Further, the Rule Proposals require these policies and procedures to address how broker-

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dealers will comply with the best execution standard and how they will determine the best market and make routing or execution decisions for customer orders.

In addition, the Rule Proposals address, among other things, conflicted transactions with retail customers by requiring broker-dealers to document efforts to enforce best execution policies and procedures for conflicted transactions and the basis for assessing compliance with best execution standard. The Proposed Rules also address payment for order flow; quarterly review of execution quality for customer orders; and annual review of best execution policies and procedures. Further, for introducing broker-dealers, the Proposed Rules require regular review of execution quality obtained from executing brokers.

#### **IV. INSUFFICIENT TRANSPARENCY PRECLUDES MEANINGFUL EVALUATION OF THE PROPOSALS**

As noted above, Cambridge fully supports efforts to enhance the market structure and efficiencies. However, such efforts should not be at the expense of benefits currently available to retail investors. These benefits take the form of broad availability of commission-free trading; faster and higher-quality trade execution; and the significant price and size improvement associated with retail orders. These benefits should not be impaired by the proposed changes to market structure.

To demonstrate this point, Cambridge understands that retail investors have enjoyed a persistent narrowing of bid-ask spreads since 1990 as a result of “changing technology innovation and competition.” Kristin Wegner, Katherine Hong, Anush Musthyala and Sreeya Narra, *A Report on Market Automation and Dependable Liquidity in Times of Uncertainty: Investor Savings from Narrowed Bid Ask Spreads, Markets Functioning as Intended* at 5, MODERN MARKETS INITIATIVE (July 2022). Narrowing spreads drove price improvements approaching \$11 billion in 2020. US Equity Market Structure Analysis: Analyzing the Meaning Behind the Level of Off-Exchange Trading Part II, SIFMA Insights at 14 (Dec. 2021), <https://www.sifma.org/wp-content/uploads/2021/12/SIFMA-Insights-Analyzing-the-Meaning-Behind-the-Level-of-Off-Exchange-Trading-Part-11.pdf>.

While the Commission presumably believes that the Rule Proposals will lead to investor benefits, Cambridge is not aware of sufficient data or visibility into the Commission’s analysis to assess this assertion. To identify and evaluate the impact of the Proposed Rules, the Commission’s underlying data must be available to the public. This is especially important here, where public involvement in the rulemaking process was extremely limited.

The current rule making process related to the Proposed Rules differs notably from the process associated with promulgation of Regulation NMS, which led to several rules addressing order execution and handling, where the Commission “engaged in a thorough, deliberate, and

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open rulemaking process" that "provided at every point an opportunity for public participation and debate." Regulation NMS, Final Rule, Release No. 34-51808; File No. S7-10-04 (2005) at 8, available at <https://www.sec.gov/rules/final/34-51808.pdf>.

#### **A. THE PROPOSALS CONTEMPLATE UNWARRANTED EXTENSIONS OF CURRENT RULES**

Today's retail investors enjoy a smooth, reliable, and consistent trading experience. Generally, costs are low and access is easy for a wide and diverse stable of investors, regardless of experience, sophistication, and wherewithal. Investors can engage with the markets in person or virtually. There is a huge and ever-expanding universe of educational materials available to investors. Diversity of account types and structures create alternatives to expensive trading commissions, high account minimums, and full-share purchase requirements.

However, the Proposals – particularly regarding changes to minimum pricing increments, retail order competition, and best execution - may go too far. In particular, the Proposals create requirements that will slow, if not impair, the smooth operation of the markets that retail investors enjoy. Further, the proposed regulatory expansion likely will lead to increased costs and reduced revenues for market intermediaries that will necessarily be passed to investors, especially in the context of the independent broker-dealer space, where margins are already extremely thin.

Furthermore, increased costs and reduced revenues are likely to drive independent professionals from their chosen livelihood. This, in turn, may result in investors losing access to the professional of their choice. Given the harm that these proposals may cause to millions of retail investors, Cambridge encourages the SEC to adopt a more incremental, fact-based approach to addressing market structure issues that accounts for the feedback of all key stakeholders, including retail investors.

#### **V. THE CURRENT PROPOSAL IGNORES COST CONSIDERATIONS**

##### **A. COST OF COMPLIANCE**

The Proposed Rules will drive significant changes in firms' business practices. Regardless of the impact of the Proposed Rules, the Commission fails to consider, much less address, increased costs incurred by market intermediaries in connection with compliance. As examples, there will be costs associated with drafting, implementing, and enforcing policies and procedures related to transactional conflicts of interest. There are similar cost issues related to enhanced due diligence, best execution evaluation, and documentation, as firms can no longer rely on wholesaler's quality reviews. Additionally, compliance with the Proposals will require substantial technology builds that will also result in significant expenditures.

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These compliance costs make it less attractive to operate an independent financial services firm and thus threaten our industry. Specifically, the Proposals imply the necessity for enhanced supervisory, surveillance and record-keeping processes, all of which comes at a cost. Additionally, with new regulation and compliance efforts comes an enhanced risk of litigation and its associated cost. As is typical, such increased costs are passed on to the investor, another consideration ignored by the Commission in its Proposed Rules.

## **B. CONSEQUENTIAL COSTS**

In addition to ignoring the cost associated with complying with the Proposed Rules, the Commission fails to consider consequential costs resulting from implementation of the Proposals. As an example, if any meaningful percentage of Cambridge's 3,800-plus financial professionals elect to step away from the industry given the increased costs, reduced revenue, and enhanced legal and compliance exposure, retail investors will be ultimately harmed. That certainly cannot be the intent of the Proposals.

## **VI. PROPOSAL-SPECIFIC CONSIDERATIONS**

### **A. COST OF MINIMUM PRICING INCREMENTS, ACCESS FEES, AND ROUND LOTS**

Cambridge is aligned with prior proposals from both exchanges and market participants in support of reducing the minimum quoting increment for symbols trading at or above \$1.00 per share. Specifically, Cambridge envisions this framework applying to symbols with an average quoted spread less than or equal to 1.1¢ and that are reasonably liquid. These constraints would narrow the number of symbols covered in the Proposals and thus make it less invasive, as well as more workable for market intermediaries.

Additionally, it is not clear that it is necessary for the minimum *quoting* increment to be the same as the minimum *trading* increment. In this regard, consistent with the positions of other firms, Cambridge supports a market minimum *trading* increment of \$.001 for symbols trading at or above \$1.00 per share.

With respect to access fees, Cambridge recommends a reduction that is proportionate to the proposed reduction in the minimum quoting increment for symbols with an average quoted spread less than or equal to 1.1¢ and that are reasonably liquid.

Finally, it is premature to roll out the Commission's odd lot dissemination proposal contained in the Commission's Market Data Infrastructure Rule. This aspect needs additional review and consideration of industry comments.

### **B. ORDER EXECUTION INFORMATION (RULE 605)**

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Cambridge does not oppose enhanced disclosures regarding execution quality. However, to make this change meaningful, the Commission must more deeply consider account technical feedback from market participants. For example, as proposed, Rule 605 appears to require larger retail broker-dealers – even those which do not direct client orders – to produce execution quality reporting and metrics identical to that required of securities exchanges and market-makers. It is not clear why such a broad scope is necessary. Furthermore, such breadth cannot be justified in light of the likely significant costs to be imposed on certain participants, as well as the fact that the proposal is likely to lead to misaligned, misleading comparisons between totally different entities.

Instead, comprehensive, and accurate data is critical to a meaningful and accurate assessment by regulators and market participants of the impact of any market structure change. Enhanced disclosure requirements should increase market transparency and competition, while minimizing unintended consequences.

### **C. RETAIL AUCTIONS**

This aspect of the Proposals is unprecedented in that it compels market participants to utilize a specific trading protocol. Such a mandate cannot be justified based on the analysis and data available to date. Moreover, even if those major inadequacies are resolved, the unprecedented nature of this proposal's reach mandates withdrawals.

To be clear, it is unclear whether proposed Rule 615 solves any meaningful problem in the retail equity market other than taking away order flow from established wholesalers. It also is unclear whether any retail price improvements under the proposed auction mechanism will be offset by the imposition of commissions when broker-dealers no longer accept payment for order flow out of fear of violating a best execution obligation contemplated by the Proposals. Finally, given the transformative nature of the proposal, there is a significant risk that the proposed changes would lead to unintended consequences.

### **D. BEST EXECUTION**

While there is acceptance for the concept of Best Execution, this proposal is not the appropriate vehicle to further that interest. Existing FINRA and MSRB best execution rules, related notices, and guidance effectively protect investors, and they have done so for decades. Rule clarification and enhancement should always be considered and discussed; a drastic, wholesale change of this framework cannot be justified based on the existing record. The best execution proposal is overly prescriptive and impractical and, as a result, may unnecessarily disrupt decades of market progress for investors.

Particularly troublesome with respect to this aspect of the Proposals, they appear to create conflicting requirements with existing FINRA and/or MSRB rules, with no guarantees of

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alignment. Moreover, pricing from the broker-dealer to the end customer (“fair pricing”) has always involved the appropriateness of commissions or concessions applied to a transaction *after* execution. The proposal for “fair pricing” to become a component of “best-execution” (with all factors involving commissions or concessions now intermingled with actual “best execution” obtained from marketplace) would create numerous inconsistencies and conflicts between market activity and other supervisory obligations.

## VII. CONCLUSION

Cambridge shares the Commission’s commitment to ensuring that our equities market remains the most liquid, efficient, and competitive in the world. This commitment is critical to ensuring the strength of our economy, supporting issuers, and helping to secure the retirement futures of all Americans.

However, Cambridge simply does not believe that there is a sufficient level of transparency into the data and analysis underlying the Proposals to facilitate a meaningful dialogue among all participants. Moreover, what information is available fails to support the professed intent to achieve greater investor protection, efficiencies, and cost savings.

We are concerned that the Commission has simultaneously issued multiple far-reaching proposals that would dramatically overhaul current market structure without adequately assessing the cumulative impact on the market or the potential for unintended consequences. While we agree that there are certain regulatory enhancements that should be advanced, we recommend pursuing a deliberate process focused on identifying tailored solutions that address clearly-identified issues as well as related industry concerns, and that enable the Commission to evaluate expected outcomes before proposing further reforms.

Cambridge appreciates the opportunity to comment on the pending rule proposal and welcomes any questions you may have regarding this matter.

Sincerely yours,

*/s/ Seth A. Miller*

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