SUBJECT: COMMENTS ON RULE PROPOSALS FILE NO. S7-30-22 RIN 3235-AN23 Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders AND S7-31-22 RIN 3235-AM57 Order Competition Rule

COMMENTER: LARRY DOUGLAS

Dear Vanessa Countryman,

Thank you for the opportunity to comment on File Numbers S7-30-22 and S7-31-22, proposed rules Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, and Order Competition Rule. I support passing these rules as soon as possible, and following that I suggest you immediately begin to draft a proposal for a plan to transition away from the Payment For Order Flow and Internalization model entirely in as orderly a manner as is possible. Allowing Payment For Order Flow and the current model for handling 9/10 retail orders (sometimes called the "Maker-Taker" pricing model [where providers of liquidity are incentivized with lucrative rebates], typically when contrasted with what is commonly known as the "Customer Priority" model, where best execution is more important than inducements) creates market conditions complete detached from the material condition of supply, demand, and the economy. The Comission should prioritize making sure a majority of public order flow from individual investors is routed through public venues with the Customer Priority model (i.e. the public exchange). Allowing functionally all retail orders to be purchased and internalized disenfranchises every American individual investor. Not only does it introduce extraordinary idiosyncratic risk in to the market, and on to all that market's participants, but it corrupts the foundation of the US market itself. Turning it from a flawed but efficient engine of value generation, in to a horrifying abomination that doesn't need to be tweaked with fixes, it needs to be entirely rebuilt from a foundational level.

We can pay lip service to providing an equal playing field, but in truth there is no way the playing field will ever be anywhere close to equal. Instead we should start to remove the obvious material advantages and privileges provided to those who already have a large amount of capital and market privileges. As well as the money to lobby (bribe) congress, and pay hefty legal retainers to draft many of the rule proposals themselves. If they are no longer able to function, so be it, than it seems their function was merely to exploit the public providing those privileges. Firms that have heavily invested in the current status quo have made themselves as unnecessary, and harmful, as the privileges they require to function.

Under the current market regulations the interests of household investors and pension funds are placed directly in conflict with market makers, their brokers, and even the exchange and clearing house. All of Wall Street's largest firms, and the firms most necessary for providing my own market access. Seeing my broker, the firm most likely to internalize and take the other side of most of my trades (the market maker), as well as the exchange my order would likely go to in the unlikely event my order was actually traded on exchange (NYSE) come out with a consensus position characterizing these rule proposals as "too far reaching" and as being implemented too fast is honestly quite frightening, and very concerning. To me this strikes me as reason to suggest their interests are in fact aligned against that of American households and citizens, as appears to be from the current rules as written. The truth is, we all have heard the public discourse move in this direction since at least 2008, with the SEC making its ostensible regulatory course clear, and preparing the market for increased prudential standards. Citadel knows about these problems, and so does the New York Stock Exchange, it's only when it becomes in their short term financial interests that their position changes.

"-The practice of payment for order flow creates serious conflicts of interest and should be banned. -Internalization without meaningful price improvement reduces competition, limits price discovery, leads to market fragmentation, and should be banned." -Citadel, 2004

Let's look at some things Citadel has admitted to since saying that:

"Over a two-year period until September 2014, hundreds of thousands of large OTC orders were removed from its automated trading processes, rendering the orders 'inactive' so that they had to be handled manually by human traders. Citadel Securities then 'traded for its own account on the same side of the market at prices that would have satisfied the orders,' without immediately filling the inactive orders at the same or better prices as required by FINRA rules.

In August 2014, Citadel was fined $800,000 for irregularities in its trading practices between March 18, 2010, and January 8, 2013. In January 2017, Citadel was fined $22 million by the SEC for misleading clients regarding the way it priced trades.

In December 2018, Citadel was forced by the SEC to pay $3.5 million over violations stemming from incorrect reporting for nearly 80 million trades from 2012 to 2016.

In January 2020, Citadel paid a 670 million-yuan ($97 million) settlement for alleged trading irregularities dating from 2015.

Citadel Securities was fined $700,000 by FINRA in July 2020, for trading ahead of customer orders. They delayed certain equity orders from clients to buy or sell shares while continuing to trade the same stocks in its own account as part of its market-making activities, according to FINRA.

In 2020, Citadel Securities was censured by FINRA a total of 19 times for a variety of misconduct, including failing to close failure-to-deliver positions, naked short selling, inaccurate reporting of short sale indicators, executing trades during circuit-breaker halts, and failing to offer its clients best prices on the bid-ask spread.

In March 2021, Citadel agreed to a censure by FINRA and a $275,000 fine for improperly reporting nearly 500,000 Treasury transactions between 2017 and 2019, revealing a systemic failure in Citadel's compliance systems."

It looks like what they said about conflicted interest has proven true, especially as far as themselves. To hear in their response to this proposal that they worry providers like them will "retreating from providing liquidity" will harm the market for individual investors was quite surprising. As one of those individual investors I would be quite happy to see them "retreat" from such supposed responsibilities. In fact I'm quite confident there are few singular things that would improve my own market experience more. Citadel harms individual investors the same way KFC harms chickens, we are nothing but a product to have every conceivable scrap value torn from, quite literally. It'd be different if I asked them to make me a market, and I thought their offerings were superior to their competitors, but the market perspective of your average individual investor looks nothing like this. We're supposed to trust participants negotiating for their own interests to look after ours to? In fact, there is hardly any other option? This is a basic disconnect in market incentives no amount of creative regulation that doesn't directly confront the issue and level the playing field will address.

Considering the major stakeholders involved in your average trade by any household investor every other stakeholder has their interests aligned directly against theirs (the household investor's), even purely from a profit motive and market structure perspective. As such, these rule proposals, while a step in the right direction, do not go nearly far enough. We have "public" exchanges the public can almost never access, and the real public's trades are handled privately, in "dark" places.

I would recommend adopting the rules as soon as possible, as well as considering closing any loopholes carved out for bonafide market making or "liquidity" purposes, as the loopholes that currently exist allow for the continued destruction of the American economy at barely a reduced pace, and are entirely unnecessary. Disturbingly, it seems like a common occurence that such exceptions end up in otherwise worthy rules due to eleventh hour changes, and restructuring of proposals. It should be noted that such occurrences, while not uncommon, are noted by the commenter to be extremely conspicuous and egregious.

A confluence of factors beyond the control of any one individual collide to produce these conditions, but sadly as conflicted interest is allowed to stand unchallenged (or even incentivized) by regulation, or due process this conflict becomes the norm. A deadly combination of bureucratic inertia, the revolving door of human capital gainfully employed churning around a particular special interest, and small self interested decisions entrenches conflict that has existed for some time.

The conflict becomes the method of doing business, out of necessity as well as ingenuity. But it builds up in *the language itself* until we find ourselves consumed in high level euphemisms like "liquidity," or "capital requirements," cloistered away safely from the possibility of a reasonable discussion based in reality. Able to talk about any tragedy in cold, comfortable terms. We didn't steal your money and gamble it away we merely fell short of our capital requirements while leveraging our available assets. We fell short of our collateral requirements during a liquidity crunch. We didn't manipulate the market by counterfeiting, we merely made a market by providing liquidity. It allows the conflicted individual or organization to merely uphold the status quo for conflict to continue, and equate any positive change with dysfunction and chaos.

It's difficult to get across just how nefarious infinite or manufactured liquidity is, and the many processes that allow for it's simulation are complex, differing, and interrelated. There isn't one golden bullet there's several, in redundancy, that change for every individual firm and portfolio. Some of them involve some of the usual suspects of the systemic risk brigade: FTDs, Swaps, ETFs, and derivatives. Others are based on relatively straight forward transactions. Most are utilized along with a privileged position in the market.

In the following two subsections I would like to comment on each proposal seperately, with each subsection beginning with a short summary of the comments. Followed by a short statement of conclusion referencing the entirety of the letter.

SUBSECTION A: S7-30-22 [Release No. 34-96494; File No. S7-30-22] RIN 3235-AN23 Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders

SUMMARY: These regulations may be helpful, especially the reporting and transparency requirements more than anything. Standardizing the minimum pricing increments of participants is a good goal for the SEC to have, but it seems the system could be far simpler, if the minimum pricing increments were based on asset type or price range, as opposed to the type of participant or venue. Without a consistent standard privileged firms will just use their access to multiple venues/methods of market participation to evade any venue or participant specific standard. Offering some participants the ability to trade in subpenny increments and some not clearly disadvantages those without access to those increments and allows their orders to be "stepped around".

This section primarily concerns practices and regulations associated with pricing orders, with a number of regulatory interventions and revisements seemingly aimed at reducing material disadvantages of buy side investors, and combating the deleterious effects these material disadvantages have on the price of their orders. While this is an important regulatory front, the Comission must remain aware of deeper conflicts that, while none the less affecting price, and are not addressed by these methods. That is, the practice of default internalization (auctions or no) and payment for order flow create conflicted interest, market fragmentation, unequal opportunity, and perverse incentives outright on their own. Continuous free market access (which should be the standard ideal) would do for price discovery what closed provider auctions never will.

Though these rules would likely have in indirect effect of improving price disovery, these auctions are no substitute for natural price discovery, as alien a concept as it is in today's high speed trader's market. In my opinion accurate price discovery should be of absolutely paramount importance to the SEC. Where accurate pricing of individual orders will save individual investors perhaps pennies on every trade (which will add up), allowing their assets to be mispriced and the price of their assets to be manipulated costs them sums untold, but could very well be in the billions or trillions. A system of fair pricing based around something like the NBBO has two essential conditions. The first condition, and the one which these group of rules seems intended to address, is that client orders take place within the NBBO at their time of order. One could think of this as the Order Price Condition. The other essential component of such a fair pricing system would be the condition that the NBBO itself represents a range approximating fair value of supply relative to demand at the time of the order. One could think of this second condition as the Market Price Condition. This second condition, while no less essential, remains largely unaddressed directly by this proposal. The minimum pricing increments would have a positive effect on this condition, by reducing the ability of large firms to manipulate the price by making orders at high speed just outside of the price increment window accessible to household investors, for example.

The practice of "stepping ahead" and similar means of using sub penny increments to simulate real price discovery and improvement must be fully addressed. While Regulation NMS seems intended to address that very thing, in today's market of high speed trading it's the norm, no the exception. As Bloomberg puts it:

"The regulators’ intentions were good—they were trying to prevent participants from improving prices on the trading venues by using trivial increments. Trading U.S. equities efficiently today, however, is a game of keeping up with exactly that: the differences in very complicated sub-penny pricing. Understanding this pricing is not enough—your technology has to be nimble enough to work around these rules because the trading fees are frequently changed to incentivize order flow to the venues."

Providing equal market access by standardizing clear fair pricing increments across all venues should be a priority for the SEC as a method of countering this clearly asymmetric market structure and market fragmentation, though it will do little to address the underlying and materially unfair design of the market system. Subpennying and selective order flow disturbs the natural market conditions and detaches them from reality, allowing high speed traders smooth function of their algorithms at the expense of the real humans behind the market. Aside from maybe the ones who own the algorithm, and therefore the algorithm is designed to benefit.

Essentially market makers and large participants will continue to "corral" retail orders in to price ranges they are comfortable with by manipulating orders. "Spoofing" large orders, or a large amount of small orders, at a single price to anchor trading long enough for them to adjust their system's orders accordingly, and to effect level 2 and market depth data. Exclusive access to subpenny increments make these tactics more effective, and increases the advantage of high speed traders, but simply changing the access to subpenny increments will not completely address this issue. Access to the public exchange is also required, as if orders are internalized it's trivial for the high speed trader to organize those orders to their own advantage, and the detriment of the fair market and investor.

SUBSECTION B: S7-31-22 [Release No. 34-96495; File No. S7-31-22] RIN 3235-AM57 Order Competition Rule

SUMMARY: Allowing limited competition through order auctions is better than no competition at all, but far inferior to true market access.

The earlier referenced "Market Price Condition," invidual order pricing, and accurate price discovery are severely impaired by the practices of Payment for Order Flow, and Internalization. Payment For Order Flow because it removes all direct market factors from an individual investors order, and replaces them with a single counterparty who is expected to simulate all those factors and market risk. There is no competition between venues to serve orders, there is only competition between restricted venues to pay the least for orders. Consumers can't "vote with their wallet" and take their business to other venues as substantially all of them participate in the Maker Taker Payment For Order Flow model, even if they aren't directly accepting payment for orders or "providing liquidity" themselves. Things like tighter spreads are prioritized, above accurate placement of the spread. Because the spread is easier to quantify, whereas "fair value" is a far more amorphous concept dependent on thousands of individual market factors (such and supply and demand) interacting. With internalization and inducements we sequester all retail flow completely from these factors, and as such the operating firms decide the price. Merely exposing these orders to auction, rather than allowing participants to buy them outright, will hardly fully solve this problem. The public's orders should all go to the public exchange, as most people who don't know better assumes they do already. There is no reason to continue the Bernie Madoff business model in to the modern day, long after his fraud was exposed, by while many similar frauds are tolerated today at an even grander scale as par for the course, business as usual. You'll excuse me but I have no trust for Citadel, Virtu or any other high speed firm, as far from doing anything to earn it they have only demonstrated that the public may trust them at their own (and the entire market's) peril.

CONCLUSION:

Ideally, I would like minimum price increments standardized across assets or price ranges for all participants. Individual investors would benefit far more from this simplified system, as opposed to our current system which presents a clear advantage to the supply side, that remains in part (along with the needless complexity) even if this rule should be adopted.

The default should be orders of individual investors go to public exchange, instead of the opposite. An order auction is an improvement, but is no substitute for real market interaction. The fair risks of the market are a much easier burden to bear for individual investors, as opposed to risks they are exposed to to benefit corrupt conflicted actors. Risks like failure of delivery, having their order handled by the person trading against them, having their order obstructed, mispriced, or sabotaged.

All very real risks as any casual glance at the BrokerCheck files of some of the largest providers will show. We talk about risks of market conditions like low liquidity and volatility, but not the real cause of those conditions. Introducing the bare semblance of competition is the smallest step we could take towards that goal. I hope you will pass these rules, and immediately begin reimagining a proposal focused on the ethic of fair and equal access to the market. Comission free trading isn't worth having the market simulated for me by a bunch of people betting against me. That's a casino, not a market.