Congress of the United States
Washington, DC 20510

September 26, 2023

The Honorable Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Gensler,

We write to express concerns with the approach of the Securities and Exchange Commission ("Commission") with respect to certain equity market structure proposals released on December 14, 2022.[1] Specifically, we are concerned that the data the Commission relies upon in the proposals' economic analysis is incomplete and may prevent an accurate assessment of the quality of trade execution received by retail investors under the current equity market structure. By extension, relying on insufficient data creates the risk that the Commission's analysis does not capture the full impact of the proposed changes on retail price improvement and the operation of equity markets more broadly. We, therefore, ask that the Commission move forward with the Disclosure of Order Execution Information proposal and analyze the newly updated 605 data before finalizing other market structure reforms that will benefit from the insights provided by the updated Rule 605 data.

The Disclosure of Order Execution Information proposal will modernize the Rule 605 data that is used to measure the quality of our equity markets and would thus ensure that any changes to the structure of our equity markets are developed with data that comprehensively assesses the quality of trade execution currently received by retail investors. The Commission's work should be informed with the most accurate and relevant data and demonstrate that all investors would be better served by the reforms it proposes.

The U.S. equity markets provide opportunity for individuals from all socioeconomic backgrounds to attain financial security, and we share the Commission's commitment to strengthen markets for all Americans. In recent years, technological and market innovations have enabled a dramatic expansion in the number of individuals participating in our equity markets, with a new generation of investors who are younger, more racially diverse, and have lower incomes.[2] As the Commission works towards our shared goal of making our markets

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[1] Order Competition Rule, 88 Fed. Reg. 128 (proposed Dec. 14, 2022) (to be codified at 17 C.F.R. 240–42); Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, 87 Fed. Reg. 80266 (proposed Dec. 14, 2022) (to be codified at 17 C.F.R. 242); Disclosure of Order Execution Information, 88 Fed. Reg. 3786 (proposed Dec. 14, 2022) (to be codified at 17 C.F.R. pt. 242).

[2] Staff of H. Comm. on Fin. Servs., 117th Cong., Game Stopped: How the Meme Stock Market Event Exposed Troubling Business Practices, Inadequate Risk Management, and the Need for Legislative and Regulatory Reform 5 n. 9 (Comm. Print 2021).

more fair and competitive for everyday investors, it is essential that we preserve the recent expansion of market access and ensure that any reforms to our equity markets are founded on a data-driven understanding of the current market structure.

Historically, data reported under the Commission's Rule 605 has been the primary tool for measuring the quality of order execution in our equity markets, particularly the price improvement that retail investors receive. This data is thus essential for evaluating whether any changes to our regulatory framework or market structure are warranted and how those changes might impact investors across the socioeconomic spectrum. However, our equity markets have changed dramatically since Rule 605 was adopted in 2000. And as the Commission noted in the Disclosure of Execution Information proposal to modernize Rule 605, the data reported under Rule 605 no longer provides an accurate measure of execution quality, particularly price improvement, for retail investors.[3] For instance, an academic study published in December 2022 found that Rule 605 data understates the financial benefits that retail investors receive from all wholesalers by at least $3.7 billion per year.[4]

We believe the Commission should use the best possible data that will allow it to fully demonstrate that any market structure reforms will benefit all investors. Therefore, we encourage the Commission to proceed toward adopting the Order Execution Disclosure proposal, considering input from market participants, to ensure that Rule 605 data accurately captures the experience of retail investors in today's markets. Such an approach would minimize the risk that changes to our equity market structure will disrupt market access for the constituents we represent, including the growing retail investor communities and institutional investors.[5]

Thank you for your attention to this issue. We look forward to hearing from you on this important matter.

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[3] Disclosure of Order Execution Information, 88 Fed. Reg. at 3787, 3840 ("[T]he content of the disclosures required by the Rule has not been substantively updated since the Rule was adopted in 2000. Changed equity market conditions and technological advancements have eroded the utility of the Rule. . . . [A]n estimated 50% of shares executed during regular market hours were included in Rule 605 reports as of February 2021 . . . .").

[4] ROBERT H. BATTALIO & ROBERT H. JENNINGS, WHY DO BROKERS WHO DO NOT CHARGE PAYMENT FOR ORDER FLOW ROUTE MARKETABLE ORDERS TO WHOLESALERS? 35 (2022) (finding that "the wholesaler(s) provides a number of services to customers that add value but are not currently measured and reported" and calculating that the monthly price improvement that the wholesaler(s) in the sample provided to retail investors was $81.2 million as measured by Rule 605 and that this figure increased nearly 5-fold to "over $388 million" when including several of those services, namely "odd lot and short sell orders and the execution of large orders at better prices than an investor would have received if the wholesaler(s) simply executed these orders at order-receipt-time depth-of-book displayed prices aggregated across all exchanges") (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4304124).

[5] [5]S.P. KOTHARI ET AL., COMMISSION SAVINGS AND EXECUTION QUALITY FOR RETAIL TRADES 3 (2021) (estimating that, based on market activity levels in 2021 for trades of fewer than 100 shares (so-called "odd lot" trades, which are a rough proxy for retail activity), a return to $5 commissions per trade would cost retail investors around $9 billion per year) (available at https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3976300) .

Sincerely,

Bill Foster
Member of Congress

French Hill
Member of Congress

Henry Cuellar
Member of Congress

Bill Huizenga
Member of Congress

Wiley Nickel
Member of Congress

Andy Barr
Member of Congress

Ritchie Torres
Member of Congress

Ann Wagner
Member of Congress

Brittany Pettersen
Member of Congress

Dan Meuser
Member of Congress

Josh Gottheimer
Member of Congress

Mike Flood
Member of Congress

Vicente Gonzalez
Member of Congress

Byron Donalds
Member of Congress

Mike Quigley
Member of Congress

Michael V. Lawler
Member of Congress

David Scott
Member of Congress

Andrew R. Garbarino
Member of Congress

Gregory W. Meeks
Member of Congress

Monica De La Cruz
Member of Congress

Sean Casten
Member of Congress

Scott Fitzgerald
Member of Congress

Bradley S. Schneider
Member of Congress

Erin Houchin
Member of Congress

Jim Himes
Member of Congress

Young Kim
Member of Congress

Steven Horsford
Member of Congress

Ralph Norman
Member of Congress

Gwen S. Moore
Member of Congress

Tom Emmer
Member of Congress

Marc Veasey
Member of Congress

Zach Nunn
Member of Congress