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March 31, 2023

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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. S7-30-22; 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:

The FIA Principal Traders Group ("FIA PTG")[1] appreciates the opportunity to submit this letter to the Securities and Exchange Commission ("SEC" or the "Commission") in response to the SEC's proposed rules regarding (1) minimum pricing increments, access fees, and round lots and odd lots;[2] (2) the Order Competition Rule;[3] (3) disclosure of order execution information;[4] and (4) Regulation Best Execution.[5]

[1] FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy.

[2] Exchange Act Release No. 96494, 87 FR 80266 (Dec. 29, 2022) ("Minimum Pricing Increments").

[3] Exchange Act Release No. 96495, 88 FR 128 (Jan. 3, 2023) ("Order Competition Rule").

[4] Exchange Act Release No. 96493, 88 FR 3786 (Jan. 20, 2023) ("Order Execution Information").

[5] Exchange Act Release No. 96496, 88 FR 5440 (Jan. 27, 2023) ("Regulation Best Execution").

Preliminarily, before commenting on the individual proposals, FIA PTG would like to take this opportunity to comment on the current quality of the markets. Despite the complexity in the current national market system, investors enjoy an ease of access that has allowed for the democratization of the financial markets at ever-decreasing costs. The U.S. markets are the envy of the global economy, and given its current state, the SEC should avoid over-regulating without a clear vision of the problems to be solved. To that end, FIA PTG supports the SEC's proposed enhancements to Rule 605, and could support certain evidenced-based adjustments to minimum pricing increments, and modifications to round lots; however, FIA PTG believes that following adoption of these changes, the SEC should pause any further changes to the national market system and assess whether additional changes are needed. Everything Everywhere All at Once may have had unbridled success in the entertainment industry; however, the SEC's approach to regulating the national market system should not go by the same title.

While proposals designed to increase transparency and put more information in the hands of investors are welcomed, overhauls to the current national market system should be carefully examined before implementation. The four proposals currently before the Commission would, each on their own, result in dramatic shifts to the operation of the market; however, the possibility of implementing a combination of any or all of the proposals is daunting. FIA PTG urges the Commission to take a thoughtful, methodical approach to considering the proposals. At minimum, the Commission should proceed with any further action incrementally, soliciting additional feedback as appropriate and taking into account new information, all to mitigate the risk of Commission action harming the market.[6] Unfortunately, proposing these changes as so-called 'stand-alone' concepts, without assessing their potential impact in their aggregate, runs such a risk.

With the above in mind, FIA PTG provides comments on the SEC's proposals below.

The SEC Should Consider Longer Evaluation Periods and Less Frequent Adjustments to Pricing Increments

As reflected in a prior white paper,[7] FIA PTG continues to oppose the current inflexible "one-size-fits-all" tick regime that does not account for differences in price level and liquidity across thousands of listed securities. But due to the complex nature of setting tick sizes across a wide range of securities, FIA PTG is unable to reach consensus on whether trading and quoting increments should be aligned and the exact parameters of a revised tick regime. FIA PTG was able to reach consensus, however, that any changes to the tick size regime should be evidence-based, systematically rolled out, and carefully evaluated for adjustments as necessary.

Additionally, with respect to the length of any evaluation period, FIA PTG believes that longer evaluation periods will reduce the risk that short-term aberrations will have an outsized impact on

[6] FIA PTG believes that the enhanced transparency expected in connection with the proposed changes to Rule 605, along with the changes to minimum pricing increments, makes the need for an order competition rule questionable.

[7] *See, e.g.*, "The Time For Reform is Now," available at https://www.fia.org/ptg/articles/time-reform-now (June 12, 2019).

market structure. Using too short of an evaluation period, especially during periods of heightened volatility, could lead to unrepresentative price variations that ultimately result in illogical minimum price increments. A longer evaluation period ensures that short-term aberrations do not distort the evaluation. FIA PTG believes that the evaluation period should be coterminous with the time between tick size changes. In other words, if tick sizes are adjusted every quarter, then the evaluation period should be a quarter, and if tick sizes are adjusted every six months, then the evaluation period should be six months.

With respect to the frequency of adjusting tick sizes adjustments should be made no more often than quarterly increments. Adjustments to tick sizes will inevitably have a follow-on cost by market participants to adjust their trading behavior to the new tick sizes. Algorithms and trading models will ultimately need to be adjusted, and the increased costs associated with such adjustments could have a negative effect on liquidity provision across the market. Longer periods between adjustments will help to minimize these costs while also delivering a more properly tailored pricing increment to the market.

FIA PTG appreciates the challenge in creating a flexible tick size regime, which is why we encourage a more pragmatic, phased, data-driven approach. The SEC's approach must properly balance the benefits of additional pricing levels against the costs of fragmenting liquidity and increasing complexity. The SEC's challenge will be to balance these competing effects to deliver an optimal outcome for investors. Any proposal ultimately adopted by the SEC must be rolled out in a phased approach with well-defined criteria for success that also allows for evaluation and rollbacks in the event of negative market effects.

Access Fee Caps Should be Maintained at 30% of the Minimum Tick Size But Should Apply More Broadly

FIA PTG believes that certain of the proposed access fee caps are too high, and rather than access fee caps that represent potentially as much as 50% of the minimum pricing increment, access fee caps should be set at 30% of the minimum pricing increment. Such an approach aligns with the current access fee cap structure in Rule 610.

A reduction in minimum price increments is likely to lead to liquidity being spread to more price points and, as a result, less liquidity at the inside, protected quotation. In addition, market participants seeking to interact with a protected quote may execute against mid-point or other non-displayed interest. As such, FIA PTG believes that access fee caps should apply more broadly, not just to top-of-book protected quotations, but to depth-of-book as well. Again, if the Commission is seeking to incentivize greater interaction on the public markets, FIA PTG believes that broader applicability of access fee caps to all executions on exchanges will foster such interaction. Access fee caps that apply only to protected quotations will incentivize market participants to implement routing strategies to exclusively interact with protected quotations. Applying access fee caps more broadly will lead to less transaction fees, greater interaction at depth below protected quotations, and further incentivize the display of quotations on displayed venues.

Additionally, in its proposal, the SEC has placed a focus on transparency of fees, by prohibiting a national securities exchange from imposing any fee or rebate for the execution of an order in an NMS stock that cannot be determined *at the time of execution*. A narrow application of the access fee cap to only protected quotes undermines this goal because a market participant could be subject to different fee caps depending on whether the order executes against a protected quotation, hidden liquidity, or depth-of-book. As a result, the Commission should require fees and rebates to be known *before* the time of execution. The Commission should do this by applying the access fee cap for all types of executions, and generally requiring that all forms of remuneration be determinable prior to the time of execution.[8]

Finally, to increase transparency of fees, FIA PTG believes that the Commission should require all affected trading venues to publish their fees in machine-readable format. Such a requirement would allow market participants to efficiently consume a trading venue's fee schedule and update their systems for fee schedule changes.

Modifying Round Lots Obviates the Need to Include Odd Lots in the SIP

FIA PTG generally supports the SEC's proposal to accelerate the implementation of the round lot definition set forth in Rule 600(b)(82). FIA PTG, however, opposes the accelerated implementation of the odd lot definition as overly burdensome and delaying the additional transparency that could be afforded by solely modifying the round lot definition. Accelerating the round lot definition is easier to implement and would require less development work on the part of market participants. However, inclusion of odd lot information in the SIP, including the inclusion of an odd lot NBBO,[9] would greatly increase the amount of work placed on the industry and only serve to delay the potential benefits afforded by the SEC's proposal. Further, the implementation of the odd lot definition should be done after implementing changes to the minimum pricing increments so that the industry can properly assess the effects of the changes to minimum pricing increments.

FIA PTG believes that the accelerated implementation of the round lot definition will reduce transaction costs and inefficiencies in the market. It should also be expected to increase transparency and improve order execution quality. With the round lot change, however, FIA PTG believes that the acceleration of the odd lot change is not necessary, especially when weighing the benefits and the costs of accelerating the odd lot definition. The modified round lot definition should increase liquidity displayed through the SIPs, whereas odd lot information is unlikely to provide the same benefits and instead is expected to significantly increase the costs and complexity

[8] As part of its proposal, the SEC also stated the requirements associated with fee transparency are designed to facilitate pass throughs. FIA PTG does not believe that the proposal would actually facilitate pass throughs. If the Commission wants to increase fee transparency, FIA PTG believes that the Commission should look to the European model whereby brokers are charged on a tiered commission structure, with step tiers based on monthly trade values.

[9] With the addition of odd lot information priced better than the NBBO, it is unclear why there is a need to specifically identify an odd lot NBBO. Identifying an odd lot NBBO would only be duplicative of the odd lot information already being provided and add additional complexity to the market without corresponding benefit.

of the proposal. Additionally, the inclusion of odd lot information can be expected to significantly increase the amount of messaging data in the markets. The Commission should also eliminate the proposed requirement to introduce a new "odd-lot NBBO." An odd-lot NBBO is likely to confuse investors, increase complexity, and will not provide a useful benchmark for comparing orders without a mechanism for adjusting metrics to account for order size. As proposed, the Commission would require market participants to measure execution quality of a 1000-share order against an odd-lot price for a single share. This measurement is not meaningful and the concept of an odd-lot NBBO should be removed.

The reduced benefits from including odd lot information must be weighed against the extensive burden on the industry associated with incorporating odd lot information in the SIPs. FIA PTG believes that accelerating the round lot definition and the odd lot definition at the same time could delay the implementation of both, whereas accelerating just the round lot definition could deliver roughly the same benefits in a much shorter implementation period. However, to the extent the Commission accelerates the implementation of only certain aspects of the Market Data Infrastructure Rule, it must proceed with implementing the remaining aspects, which include important protections for market participants relating to the dissemination of market data.

The Proposed Order Competition Rule Contains Anti-Competitive Elements that Should be Eliminated Should the SEC Adopt the Proposal

While FIA PTG is not commenting on the Order Competition Rule in its entirety, FIA PTG believes that the SEC should remove elements that are anti-competitive in nature if it is adopted. In particular, the SEC prescribed execution priorities in the auctions whereby the account of a customer would have priority over an account of a broker-dealer at the same price. FIA PTG believes that this priority requirement should be removed if the Order Competition Rule is adopted by the SEC.

Throughout the Order Competition Rule proposal as well as in the Regulation Best Execution proposal,[10] the SEC highlighted auction design specifications that could disincentivize participation in an auction due to one market participant receiving an advantage over another. In fact, the SEC stated that auctions may not have an execution priority that favored the broker-dealer that routed the order, the originating broker for the order, the competition trading center operating the auction, or any affiliate of the foregoing persons. Despite this recognition that anti-competitive

[10] *See, e.g.,* Order Competition Rule at 130 ("Proposed Rule 615, the Commission has been guided by this goal of benefiting investors by enhancing competition. The overriding objective of these elements of Proposed Rule 615 is to maximize the opportunity for a wide range of market participants to participate in auctions on terms that will promote the best possible prices for the orders of individual investors."), 158 ("Accordingly, if only some market participants knew the identity of the originating broker, other potential responders may not participate due to fear of the winner's curse (winning the least advantageous auctions and losing the most advantageous auctions because of an information disadvantage). Limited participation could harm the competitiveness of qualified auctions."); Regulation Best Execution at 5456 ("A broker-dealer should generally consider addressing in its policies and procedures how it would assess the features of options price improvement auctions, how those features might affect the level of competition and the execution quality offered by the auctions, and whether those features would allow an auction to provide the most favorable prices under prevailing market conditions.").

elements in the design of an auction could hinder competition for segmented orders, the SEC mandated an execution priority between customer accounts and broker-dealer accounts that has such an effect. Mandating such an execution priority is antithetical to the purpose of maximizing competition for segmented orders and should be eliminated from any final rule.

Further, if the SEC moves forward with the Order Competition Rule, FIA PTG believes that the SEC needs to closely monitor execution quality, the potential effects on the national market system, and if necessary, quickly move to rescind or modify the Order Competition Rule to resolve any unforeseen consequences.

Increased Transparency Related to Order Routing Practices is Beneficial for the Market

FIA PTG is generally supportive of the proposed amendments to Rule 605. For close to ten years, FIA PTG has called for various transparency-related enhancements to Rule 605, including enhanced execution disclosures. FIA PTG believes that the proposed amendments to Rule 605 are beneficial steps to increasing transparency to investors.

SEC Should Clarify that Regulation Best Execution Does Not Extend Best Execution Obligations to Brokers that are not Handling Orders

While FIA PTG is not commenting generally on Regulation Best Execution, FIA PTG believes that the SEC should clarify that Regulation Best Execution maintains the current distinction in FINRA Rule 5310.04 that a member's duty of best execution applies when the broker is "handling" an order on behalf of a customer, where handling includes accepting and routing an order but not simply executing a customer order against the member's quote. FINRA Rules makes clear that best execution only applies where the order is routed to another broker for order handling and execution rather than presented to another broker solely for execution with the broker, such as when a broker-dealer is acting solely as the buyer or seller in connection with orders directed to it. The SEC needs to ensure that this distinction is maintained as part of Regulation Best Execution.

Additionally, the Commission asks whether there should be an exemption from the proposed best execution standard for a broker-dealer that engages in transactions for or with sophisticated market professionals in asset classes other than municipal securities. FIA PTG believes that the Commission should adopt such an exemption. The exemption with respect to municipal securities is due to a recognition that such customers are capable of evaluating investment risks and market value independently, and consequently, do not require the additional layer of protection afforded by MSRB Rule G-18(a).[11] FIA PTG believes that this rationale applies equally outside the municipal securities market, and the SEC should explore whether Regulation Best Execution would be an unneeded regulatory burden with respect to certain customers. For instance, if an order is sent by an algorithm or smart order router to another broker, the use of such technology

[11] While FINRA does not have as broad of an exception in Rule 5310, FINRA does recognize that best execution rules do not apply where a broker is handling the order of another broker, since the definition of "customer" excludes broker-dealers.

signifies a level of sophistication that does not require a broker-dealer receiving the order to independently make a best execution determination. If a favorable execution is not provided, the algorithm or smart order router will change its routing behavior without the need for regulatory intervention. In other words, competition, rather than regulation, will lead to the most efficient outcome.

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As previously stated, FIA PTG believes that the SEC's proposals discussed herein could have broad implications for the national market system, and the potential effects of any of the proposals individually are difficult to predict – trying to predict the impact of them together is virtually impossible. As a result, FIA PTG recommends a phased implementation of any adopted proposals. In particular, FIA PTG would recommend first adopting the enhancements to Rule 605, adjustments to minimum pricing increments, and accelerating the round lot definition. At that point, FIA PTG would recommend that the SEC re-evaluate the other proposals in light of the effects of adopting these proposals, as well as providing the public the opportunity to comment on the necessity of the other changes.[12]

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FIA PTG appreciates the SEC's consideration of this comment letter. If you have any questions, please do not hesitate to contact Joanna Mallers at jmallers@fia.org.

Respectfully,

FIA Principal Traders Group

Joanna Mallers

Joanna Mallers
Secretary

cc: Gary Gensler, Chair
Hester M. Peirce, Commissioner
Caroline A. Crenshaw, Commissioner
Mark T. Uyeda, Commissioner
Jaime Lizárraga, Commissioner

[12] In the event that access fees are other than 30% of minimum pricing increment, FIA PTG believes that the access fee changes and the minimum pricing increment changes need to be adopted at the same time.