September 30, 2022

VIA ELECTRONIC DELIVERY

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: **Exemption for Certain Exchange Members, Release No. 34-95388; File No. S7-05-15 (July 29, 2022)**

Dear Ms. Countryman:

Virtu Financial, Inc. ("Virtu")[1] respectfully submits this letter in response to the above-referenced rule proposal issued by the Securities and Exchange Commission (the "SEC" or "Commission") on July 29, 2022, to amend Exchange Act Rule 15b9-1 (the "Proposal").[2]

Under Section 15 of the Securities Exchange Act of 1934, most "brokers" and "dealers" must register with the SEC and become members of FINRA unless they effect transactions in securities solely on an exchange of which they are a member.[3] The Proposal seeks to close what is perceived to be a gap that pertains to broker-dealers that are only registered with exchange self-regulatory organizations ("SROs") and are not members of FINRA, but who conduct off exchange proprietary transactions in securities. The majority of the transactions falling into this regulatory gap – i.e., that are not subject to FINRA oversight – appear to be transactions in Treasury securities.

Virtu has long been a vocal proponent of smart, data-driven regulation that supports the goals of enhancing transparency, fostering robust competition among market participants, and ensuring the high quality of the investor experience. However, we also strongly believe that enhancements to the regulatory framework need to be specifically tied to a market failure with documented harm to investors – not just an appetite to change the rules, and that imposing regulations that add significant burdens to market participants without corresponding benefits to investors and the marketplace is unfair and inappropriate. We respectfully submit that, in the

[1] Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu's market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. As such, Virtu broadly supports innovation and enhancements to transparency and fairness which enhance liquidity to the benefit of all marketplace participants.

[2] U.S. Securities and Exchange Commission, Proposed Rule, *Exemption for Certain Exchange Members*, Release No. 34-95388; File No. S7-05-15 (July 29, 2022), *available at* https://www.sec.gov/rules/proposed/2022/34-95388.pdf.

[3] 15 U.S. Code § 78o(b).

current instance, while the Commission has identified what it considers a problem, it has failed to consider reasonable alternatives to solve that problem.

Rather, the Proposal's proffered solution to the problem identified is additional oversight that might close one gap but augments another problem – which is duplicative oversight. Instead, the Commission should revisit the current regulatory regime that results in oversight by multiple self-regulatory organizations and duplicative costs to broker-dealers and focus on streamlining the current system of oversight. The Proposal also highlights a problem that is not addressed by the solution – i.e., that the Treasury market is unnecessarily opaque. To address this, the Commission should instead focus on a rulemaking that results in dissemination of last sale reports for Treasury securities. Finally, we have significant concerns that the Commission has failed to adequately consider how this Proposal will impact market participants in light of several other recently issued and outstanding proposals that seek to expand the SEC's jurisdiction.

Duplicative Oversight

A principal concern advanced by the Proposal is that firms that are eligible for an exemption under Rule 15b9-1 are not subject to the important oversight, examination, and enforcement functions that FINRA plays for the broker-dealer community. This concern overlooks the regulatory authority the exchange SROs already possess and exercise, as well as the substantial oversight authority of the SEC. On this point, we share the views expressed by Commissioners Peirce and Uyeda that the Proposal "seems to reflect a view that the Commission needs to cede primary regulatory authority over broker-dealers to FINRA," and sends the message that "the Commission is comfortable surrendering its primary responsibility to oversee the markets to FINRA."[4] The SEC has clear authority to exercise oversight of all firms, including non-member firms covered by the exemption, and a panoply of regulatory tools to ensure compliance with the securities laws.

We are also concerned that the Proposal will lead to yet more duplicative oversight, and the attendant costs and burdens that come with being subject to multiple and competing oversight regimes. Less than two years ago, the Staff of the Division of Trading and Markets released a paper on cross-market regulatory coordination that highlighted the challenges and inefficiencies of duplicative regulation:

> "While multiple SROs reviewing the same securities activities can have benefits, in that the resources and expertise from several organizations can be brought to bear on assessing these activities, ***it also can lead to duplication and inefficiencies in the regulatory process and increased burdens on member firms***. A variety of steps historically have been taken to address these potential burdens and inefficiencies, and to improve regulatory outcomes. Currently, regulatory coordination among

[4] Statement of Commissioners Hester M. Peirce and Mark T. Uyeda on Proposed Amendments to Exchange Act Rule 15b9-1 (July 29, 2022), *available* at https://www.sec.gov/news/statement/peirce-uyeda-statement-proposed-amendments-exchange-act-rule-15b9-1-072922.

SROs occurs in a number of ways – through the use of 17d-2 Plans, Regulatory Services Agreements ("RSAs"), and the Intermarket Surveillance Group ("ISG"), as discussed in more detail below. We understand that these approaches have largely been successful in mitigating regulatory duplication to date and have enhanced regulatory outcomes."[5](emphasis supplied)

While we appreciate the aim of the Proposal is to close a gap, we caution the Commission not to choose the knee-jerk, default solution of mandating FINRA membership without identifying any harm caused by the current system or considering the potential for overlapping regulatory burdens that could result. The market participants that would be required to register with FINRA already are subject to the regulations and oversight functions of the exchange – and in some cases, multiple exchanges – of which they are members, as well as that of the SEC. It is critical that any changes that the SEC adopts consider the potential for duplicative oversight and take steps to minimize the resulting burdens. For example, (1) this could take the form of a more limited FINRA membership that would provide for limited oversight covering the reporting of over-the-counter transactions to FINRA and related surveillance; (2) a requirement that exchange SROs enhance the programs to capture their members off exchange activities; or (3) the SEC could require the broker-dealers off exchange proprietary transactions be reported to the SEC directly. These are just three potential alternatives that limit regulatory duplication.

Treasury Last Sale Dissemination

The most significant issue that is highlighted by but not solved for in the Proposal is that last sale information for Treasury securities is not disseminated to the public.

We are firm believers in the importance of promoting transparency in our markets, and strongly support regulatory initiatives that would enhance the public reporting of last sale information for all securities. Indeed, we recently submitted a comment letter to the Treasury Department in support of substantially increasing the scope and nature of TRACE-reportable transactions that are required to be published to the market as a way to make post-trade transparency in the Treasury markets more robust.[6] However, we question why the Commission did not consider alternatives that would address this reporting gap without forcing large numbers of broker-dealers to register with FINRA and potentially subject them to duplicative regulatory oversight. Instead, the Commission could have considered a more targeted solution by mandating that all last sale Treasury transaction data be reported to, and disseminated by, TRACE. In other words, the purported problem that the Proposal seeks to address – dissemination of last sale Treasury transaction data by TRACE – could have been addressed with a much more tailored solution at a fraction of the cost.

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[5] U.S. Securities and Exchange Commission, Division of Trading & Markets, *Staff Paper on Cross-Market Regulatory Coordination* (Dec. 15, 2020), *available at* https://www.sec.gov/tm/staff-paper-cross-market-regulatory-coordination.

[6] Virtu Letter to Treasury Secretary Yellen (Aug. 26, 2022), *available at* https://virtu-www.s3.amazonaws.com/uploads/documents/Virtu-Financial-Treasury-RFI-Comment-Letter-08252022.pdf.

Intersection with Other Rule Proposals

We have significant concerns that the Commission has failed to adequately consider how this Proposal will impact market participants in light of several other recently issued and outstanding SEC proposals that seek to expand the SEC's jurisdiction. For example, in March of this year, the SEC issued a proposal that would expand the definition of "dealer" and "government securities dealer", potentially forcing dozens of financial services firms to register as dealers with the SEC and assume the very significant costs and burdens attendant to registration.[7] Just two months before that, the SEC issued a proposal that would significantly expand the universe of firms required to register as Alternative Trading Systems ("ATSs"), again potentially involving very significant costs and burdens on impacted market participants.[8] There is no indication in the current Proposal that the Commission has considered how these proposals – and the significant new obligations and responsibilities they would impose, not to mention the potentially staggering costs – would impact investors and market participants. We respectfully submit that the Proposal is deficient in that it fails to analyze the cumulative costs, burdens, and market impact of various outstanding proposals that, if adopted, could force an unquantified number of firms to register with the Commission or FINRA.

Finally, even more concerning is the Proposal's failure to adequately identify and quantify the purported benefits that the proposed changes would confer on investors and the marketplace.

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[7] SEC Proposed Rule, *Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer* (Mar. 28, 2022), *available at* https://www.sec.gov/rules/proposed/2022/34-94524.pdf.

[8] SEC Proposed Rule, *Amendments to Exchange Act Rule 3b-16 Regarding the Definition of "Exchange"; Regulation ATS for ATSs That Trade U.S. Government Securities, NMS Stocks, and Other Securities; Regulation SCI for ATSs That Trade U.S. Treasury Securities and Agency Securities* (Jan. 26, 2022), *available at* https://www.sec.gov/rules/proposed/2022/34-94062.pdf.

Virtu strongly supports the goals of enhancing transparency, promoting competition, and protecting investors, and applauds the Commission's efforts to strengthen the regulatory framework of our markets in pursuit of these objectives. Unfortunately, the Proposal is too blunt an instrument which would impose very significant costs and burdens attendant to FINRA membership to respond to a perceived problem that could be addressed with much less burdensome alternatives. We also are concerned that the Proposal is reflective of a worrisome trend under the current SEC to address purported problems – without providing data to demonstrate harm caused by the current state – simply by forcing more and more firms to register and become subject to redundant regulatory oversight.

We believe it is imperative that the Commission consider the impact this flawed approach could have on competition in the marketplace and propose less burdensome alternatives that could achieve the same objectives.

Respectfully submitted,

Thomas M. Merritt
Deputy General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime E. Lizarraga, Commissioner
Dr. Haoxiang Zhu, Director, Division of Trading and Markets