

March 31, 2023

Submitted electronically

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

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

Dear Ms. Countryman:

LPL Financial LLC (“LPL”) appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the “Commission” or “SEC”) on the proposals listed above (collectively, the “proposals”).

We understand that the Commission believes that these proposals will work to strengthen investor protection and ensure that conflicts are minimized. However, LPL is writing to express our concern that these proposals, excluding the Disclosure of Order Execution Information proposal (“Rule 605 amendments”), will ultimately result in unnecessary compliance costs and operational risks without providing meaningful investor protection.

## **I. Overview of LPL**

LPL is a leading retail investment advisory firm, independent broker-dealer and registered investment advisor (“RIA”) custodian. We serve more than 21,000 financial professionals, including financial professionals at approximately 1,100 institution-based investment programs and at approximately 550 RIA firms nationwide. LPL provides them with the technology, research, clearing and compliance services, and practice management programs they need to create and grow thriving practices. We enable our affiliated financial professionals to provide objective guidance to millions of American families seeking wealth management, retirement planning, financial planning and asset management solutions.

We believe that all Americans deserve access to financial planning and advice, and our business model emphasizes the important role that financial professionals have in preparing their clients for the future. Our firm’s mission centers around the financial professional, and we generally do not enable self-directed trading. With this in mind, in 2022 LPL executed over 43 million equity trades, 320,000 options trades, and 1.2 million fixed income trades.

## **II. Support for Disclosure of Order Execution Information**

Updates to Rule 605 of Regulation NMS, which governs disclosure for order execution, are overdue. LPL supports the Commission’s proposal to amend Rule 605 to require enhanced disclosure of order execution in light of the significant changes in the financial markets since the rule was originally adopted more than twenty years ago. Investors will find these enhanced disclosures to be helpful and informative

when making the decision to work with a broker-dealer and its registered representatives. Therefore, we welcome the Commission's rulemaking in this area.<sup>1</sup>

### **III. Discussion of Proposals: Regulation Best Execution and Order Competition Rule**

LPL believes our comments on the proposed Regulation Best Execution and the proposed Order Competition Rule are best understood with the following background of LPL's trading desk operations. First, LPL does not engage in proprietary trading, except for incidental error corrections of trades and fractional share transactions, and LPL has no affiliated market center. Second, LPL does not receive payment for order flow, does not receive volume discounts, and does not route limit orders to take advantage of rebates for providing liquidity. Third, LPL continuously evaluates new market centers and generally will seek to add a new market center if it will improve LPL's ability to provide best execution while providing an acceptable level of service and reliability. It is our practice to provide our clients and affiliated financial professionals with outstanding execution, and the choices LPL makes are not influenced by potential conflicts as to the choice of execution venue.

LPL's concern with the proposals is solely due to the negative operational impact and cost of implementation, which we believe are unnecessary. Under the current regulatory regime, we are able to provide clients with performance that exceeds industry averages for: the percentage of orders receiving price improvement; effective spread; and speed of execution. Our clients receive robust disclosure on our trading processes and are reassured that proprietary trading and payment for order flow do not shape our decisions about where and how to execute customer orders.

The proposed Regulation Best Execution and the proposed Order Competition Rule will create significant, unnecessary costs and burdens on both investors and broker-dealers. If implemented, these proposals will increase market complexity and create a risk of systems failure that is not offset by demonstrated gains. This would erase the progress that the equity, options and fixed income markets have made to become increasingly cost efficient for investors. Those markets currently offer lower cost alternatives for investors, which increases access to investing across all demographics. The markets have also performed well during times of unprecedented market volume and volatility. The added costs and complexity of the proposed rules create the risk of making the markets inaccessible for a critical portion of the investing population. As costs rise and profits are constrained, liquidity providers may withdraw from the market.

#### **Self-Regulation is Well Suited to Promote Best Execution**

LPL believes that the nuanced issue of best execution is sufficiently regulated and enforced by FINRA, and that the self-regulatory model is well suited to understanding and responding to the ever-changing market. Both FINRA and the MSRB have best execution requirements that are actively and effectively enforced. It would be more impactful for the Commission to work with both organizations to enhance the current regulatory regime rather than replacing it outright. LPL notes that there is no substantive criticism of FINRA's or the MSRB's efforts in the Rule Best Execution proposal. Furthermore, it is unclear how providing the SEC with the ability to bring injunctive actions and cease and desist proceedings for allegation of violations will be more impactful than the remedies available to FINRA or currently available to the SEC.<sup>2</sup>

FINRA, building on its preceding iterations, has decades of experience with enforcing best execution in the equity, options and fixed income markets and has taken numerous enforcement actions related to best execution. If Regulation Best Execution is adopted, FINRA will be compelled to examine and enforce the provisions of Regulation Best Execution. This will likely result in FINRA applying only that rule rather than rules adopted by FINRA and MSRB, effectively superseding longstanding and well-established and

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<sup>1</sup> LPL believes the Rule 605 amendments can be improved, however, as set out in SIFMA's omnibus comment letter on the proposals. Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission dealing with four proposals (March 31, 2023) ("SIFMA Omnibus Letter").

<sup>2</sup> Best Execution proposal at 308-09.

well-understood requirements. Ultimately, it is unnecessary for there to be greater SEC involvement in examining and enforcing a best execution standard because FINRA and MSRB are effectively fulfilling these roles.

### **Creation of Unnecessary Systemic Risk**

The *Dodd-Frank Act* included systemic risk as a key component to ensuring the financial health of the U.S. Economy.<sup>3</sup> The Order Competition Rule and Amended Minimum Pricing Increments and Access Fee Caps proposals create the risk that changes to interdependent systems will lead to system failures, underperformance and unintended consequences in vital components of the financial markets. These markets have been subjected to substantial stress with swings in volatility and volume and the current market has met these challenges. A fundamental overhaul without better justification is not warranted.

### **Consider the Fixed Income Market Separately**

Application of proposed Regulation Best Execution, particularly the provisions for conflicted transactions, is ill-suited to the unique attributes of the fixed income market. Corporate bonds, treasuries, and municipal securities trade quite differently than equities. Each subset of the fixed income market has its own unique characteristics and investors. The Commission's imposition of equity market concepts on the fixed income market with regard to Rule 15c2-11<sup>4</sup> is instructive. The Commission's sudden and unexpected application of Rule 15c2-11, which works well for equities, to the fixed income market, necessitated a set of no-action letters<sup>5</sup> to avoid serious market issues. We urge the Commission to take the opportunity to exempt fixed income from the scope of these rules before they become final. In the absence of an exemption, the Commission must justify how applying the conflicted transaction rules to riskless principal trades in fixed income securities will advance the interests of investors.

## **IV. Insufficient Data and Opportunity to Respond to the Proposals**

The Commission's four proposals released on December 14, 2022 would, if implemented, overhaul the financial markets and all four proposals are inextricably linked together. The proposed fundamental changes and detailed prescriptive requirements require a significant period of open and wide-ranging dialogue with the industry. The industry cannot fully understand and provide meaningful comments on over 1,600 pages of proposals in just 90 days.<sup>6</sup>

LPL believes that much more study and dialogue between the industry and the Commission is needed before instituting the sweeping changes required to implement the proposed Order Competition Rule, proposed Regulation Best Execution, proposed Regulation NMS: Minimum Pricing Increments, Access Fees and Transparency of Better Priced Orders. The sheer volume of the rule filings, their complexity and their interrelatedness makes it crucial that industry participants be actively and appropriately involved. These changes should have been the subject of a concept release before issuing rule proposals.

## **V. Consider Delaying Rulemaking to Measure Effectiveness of Changes to Rule 605**

We believe the U.S. equities, options and fixed income markets are remarkably efficient and robust. As stated above, LPL supports the Rule 605 amendments and believes that implementation of the amended rule will improve the market by promoting greater transparency of execution quality in a number of aspects. Furthermore, as the Commission and self-regulatory organizations make further use of the Consolidated Audit Trail and TRACE, additional improvements in execution quality are expected.

<sup>3</sup> DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, PL 111-203, 12 USC 5301 et seq.

<sup>4</sup> 17 CFR § 240.15c2-11.

<sup>5</sup> On December 16, 2021, the staff of the Division of Trading and Markets ("Division") issued a no-action letter pertaining to amendments to Rule 15c2-11 ("Amended Rule"). On November 30, 2022 the Division issued another no-action letter related to the Amended Rule.

<sup>6</sup> See letter dated February 8, 2023 from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman requesting that the Commission extend the time period for the solicitation of comments on the four proposals.

To enhance the Rule 605 amendments, LPL suggests that FINRA and the Commission utilize CAT data to create a report for each entity participating in the CAT and then make all such reports easily accessible in one location. These changes will likely result in a meaningful increase in transparency for investors, and could negate the need to undertake further rulemaking. We believe that the Rule 605 amendments should move forward, and only then should the Commission consider moving forward with the other proposals if the data gathered pursuant to the Rule 605 amendments proves additional changes are needed.

## **VI. Consideration of Alternative Regulatory Approaches**

LPL supports the SEC's goal of promoting the interests of investors. However, we believe that the proposals will work against this goal. Instead, LPL recommends that the Commission use the following approaches to protect investors.

- **Disclosure:** LPL believes that the most powerful and efficient tool available to the Commission is disclosure. Clear, concise disclosure promotes transparency and allows market forces to efficiently shape market behavior in a flexible and cost-efficient manner. When the Commission micro-manages market structure it stifles competition and innovation while ultimately increasing costs.<sup>7</sup>
- **Competition:** The U.S. financial markets have been remarkably innovative, resilient, and efficient to the benefit of retail and institutional investors. The strengths of the financial markets stem from robust competition for customers, orders, and executions. The Commission should promote order competition rather than narrowly proscribing trading venues such as the auctions mandated by the Order Competition Rule. We also believe that competition in a more transparent market will more effectively improve execution quality when compared to the proposed lengthy statements detailing policies and procedures required by Regulation Best Execution.
- **Incrementalism:** Incremental regulatory changes are better than sweeping changes. The Order Competition Rule would impose a sweeping and fundamental change in the structure of the equities markets. Its detailed and proscriptive approach is fraught with risk and likely to cause unintended and unforeseeable negative consequences. Rather than dramatically overhauling the entire market, LPL recommends that the commission consider smaller changes that can achieve a similar result.

Should the Commission move forward with finalizing these proposals, LPL asks that Commission staff provide guidance to firms as they work to implement these sweeping changes. Open dialogue between the staff and the industry can help improve the implementation of systems, policies and procedures prior to the effective date of the rule. We suggest that the Commission take an approach similar to FINRA CAT's during CAT implementation.<sup>8</sup>

## **VII. Support for Comments of Associations**

LPL is a member of the Securities Industry and Financial Markets Association ("SIFMA"). SIFMA has been working on behalf of member firms to voice concerns with the proposals. We wish to state our support for SIFMA's comments<sup>9</sup> on the proposals and respectfully refer the Commission to SIFMA's letters for further discussion on the proposals.

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<sup>7</sup> See, John Polise, A Bridge too Far: A Critical Analysis of the Securities And Exchange Commission's Approach to Equity Market Regulation, 11 Brook. J. Corp. Fin. & Com. L. 285 (2017). Available at: <https://brooklynworks.brooklaw.edu/bjcfcl/vol11/iss2/3>

<sup>8</sup> See [www.catnmsplan.com](http://www.catnmsplan.com) with guidance including scenarios, FAQ, and much more.

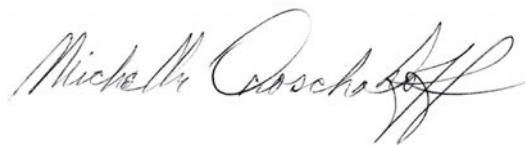
<sup>9</sup> LPL's supports the comments made in both the SIFMA Omnibus Letter on the SEC's proposals and the separate SIFMA comment letter on the application of the Regulation Best Execution to the fixed income markets. Letter from Leslie M. Norwood, Managing Director, SIFMA, and Christopher B. Killian, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission (March 31, 2023).

### VIII. Summary

One of LPL's corporate values is "Value Progress over Perfection." LPL believes that many of the Commission's objectives could be met with much lower cost and with much less risk by making incremental progress rather than implementing dramatic changes to the markets. The strong and vibrant equity, options and fixed income markets were built with decades of incremental changes and innovation. Some of it led by regulators (e.g., TRACE) and much of it led by industry (e.g., electronic trading). The Commission should emphasize its core strength of disclosure and avoid prescriptive changes.

Thank you for your consideration of our comments. If you would like to discuss this letter further or have any questions, please contact Richard Wallace at [REDACTED].

Sincerely,



Michelle Bryan Oroschakoff  
Managing Director  
Chief Legal Officer