March 31, 2023

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, Release No. 34-96494; File No. S7-30-22

Dear Ms. Countryman:

Proof Services LLC ("Proof") appreciates the opportunity to comment on this release concerning tick sizes, exchange access fees, the nature of pricing tiers, and the acceleration of some of the enhancements to SIP data. As an institutional broker for US equities, we would like to add our thoughts on a few of these topics.

As an institutional broker, we are subject to exchange access fees and we consume the SIP as our source of real-time market data. Because we believe the inclusion of the new odd-lot information will meaningfully improve the quality of SIP data, we are pleased to see an acceleration of this inclusion in this proposal. We are also pleased to see the general reduction of the access fee cap to a level that is much lower than it is today but high enough to support a competitive variety of exchange business models. In particular, we believe this will help to reduce the extent of the conflict of interest in agency routing decisions.

We also support the proposal to require that exchange pricing be computable at the time of trade. However, we expect this will do little (if anything) to reduce the complexity of today's pricing tiers, and we would like to see a much more drastic policy change. We propose that pricing should be based solely on the characteristics of the trade in question, not characteristics of the history of trading activity of the participants involved.

Pricing tiers as currently constituted should be a source of shame for our industry. The over one thousand pricing paths are more numerous than the number of brokers who handle the vast majority of flow. An excellent illustration of this can be found in the 2018 report from RBC, "Complexity of Exchange Pricing and Corresponding Challenges to Transparency and Routing."

This enables pricing tiers to act as an obfuscation of bespoke pricing. We should then ask: would we want to allow exchanges to simply produce a price list that named a distinct price for each broker?

Such a thing would make a mockery of the notion of fair access, and serves the interests of exchanges and large brokers over market quality. Yet the economic incentives of exchanges drive the evolution of pricing structures in this direction, and any policy regime that allows too many degrees of freedom in how exchanges can set pricing as a function of participant's prior trading history is vulnerable to this phenomenon. The supposed remedy, that the SEC must approve each pricing change, clearly has not historically worked to keep this problem in check, and we have reached a state where further intervention is necessary.

The justification for pricing tiers based on participant trading history is that high volume participants should be allowed to pay less, and exchanges should be able to compete on the basis of offering them preferred pricing. This results in those who trade less subsidizing the activity of those who trade more. One could argue this is good, as those trading more are providing more liquidity to the market. But surely, those who trade more do so because their trading is profitable on average. If the profit margins of some additional activities are so thin as to be reversed by small changes in the pricing structure, then the market is signaling that these are not particularly valuable services. It would also mean that these effective subsidies serve as a strong barrier to entry to new market participants, as some sources of profit would be unavailable to them until they reach a sufficient volume tier.

If one wanted to keep the ability for exchanges to incentivize activity based on historical volumes, it does not follow that pricing tiers need to be allowed to grow complex enough to support hundreds or thousands of pricing paths. A simple cap on the total number of pricing tiers, for example, could impose a useful ceiling on pricing complexity, and reign in the ability of pricing schedules to drift into effectively bespoke pricing.

Regardless of the undisclosed mapping of market participants into tiers, the appearance of such complexity undermines faith in the fairness of market access. An incremental approach of approving each individual fee change has led to a destination that is no longer holistically justifiable from first principles, and we would urge the SEC to consider more drastic reforms on this front.

Sincerely,

Allison Bishop

President of Proof Services