

March 23, 2023

Via Email

Ms. Vanessa Countryman

Secretary

U.S. Securities and Exchange Commission

100 F Street NE

Washington, D.C. 20549

Re: File No. S7-30-22; Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders (“Reg NMS Proposal”)

Dear Ms. Countryman:

Brandes Investment Partners, L.P. (Brandes) is a global investment advisory firm managing equity and fixed-income assets for institutional and private clients worldwide, including employee benefit plans, foundations, endowments, corporations, and Taft-Hartley Plans. Headquartered in San Diego, CA, Brandes and its related entities have offices in Milwaukee, Toronto, Dublin, and Singapore. As of December 31, 2022, the firm managed \$18.9 billion. Brandes and the undersigned asset managers appreciate the opportunity to comment on the above referenced rule. As fiduciaries for our clients, we depend on rules that are appropriately updated to prioritize their interests and maintain fair, transparent, and competitive markets.

We support the Securities and Exchange Commissions' (Commission) effort to update the U.S. equity markets NMS framework, with an eye on fairness for all investors. The recent proposals acknowledge how the U.S. equity markets have evolved over the years and specifically, the dramatic growth in retail participation. While much of this participation has been directly through individual online trading accounts, a significant percentage of retail investment remains with institutional market participants.

We primarily focus our comments on the proposal to reform tick size and access fees.

### **Tick Sizes and Trading Increments**

#### Tick Size

In the years since Rule 612 was adopted, many stocks have become effectively “tick-constrained” by the \$0.01 (one cent) minimum tick requirement of Rule 612. This can reduce trading efficiencies and increase the creation of complicated exchange pricing schedules designed in part to allow participants to trade at various prices within the penny increments. Accordingly, we support a targeted reduction in the tick size for stocks that can clearly benefit from it.

At the same time, the Commission's statements when it adopted Regulation NMS are still true – it is important to make the increments wide enough to promote depth at those increment levels and avoid predatory behavior.

We are concerned that the Commission's proposal has overshot the mark for at least three reasons:

- **Complexity:** With the benefit of hindsight, we feel the Commission proposal is too complex. Having four tick sizes ranging from \$0.01 (one cent) to \$0.001 (one-tenth of a cent), that are regularly reviewed and adjusted for any security could introduce systemic risks. It would also add complexity for long-term investors in seeking to provide or access liquidity on exchanges and could work against their interests.
- **Insignificant Price Variation is Outweighed by Risks of Predation:** We do not believe that tick increments as small as \$0.001 or \$0.002 are likely to benefit institutional investors. We are often looking to buy or sell significant volumes of securities, and our execution costs are not only unlikely to decrease but could potentially increase with a materially narrower tick increment, because exceedingly narrow ticks exacerbate risks of quote fading and front running by predatory traders.
- **Fees:** Requiring very narrow tick increments would also create the need for two types of access fee reductions to avoid locked and crossed markets.

Therefore, we favor a reduction in tick size to \$0.005 (one-half cent) for stocks that regularly trade at or near the existing \$0.01 (one cent) tick minimum. For other stocks, the tick-size should remain one cent. While a considerable number of stocks could benefit from the reduced tick size, we believe the Commission's proposal would apply the half-cent tick too broadly by covering all symbols with an average spread of up to \$0.04 (4 cents).

#### Trading Increment

Regarding minimum trading increments, a potential benefit is setting a standard that would facilitate the ability of orders from retail and institutional investors to interact. Both classes of investors share an overriding objective to trade at a fair price, rather than to benefit from micro-second price movements. And institutional investors would welcome the opportunity to trade more often with other investors that share this interest. One of the core goals of the national market system laid out in the Securities Exchange Act of 1934 is to create opportunities "for investors' orders to be executed without the participation of a dealer."

We understand that the Commission has endeavored to level the playing field across trading venues by harmonizing tick and trading increments across all of them. This would be a meaningful change that could improve market quality, or materially undermine it, and we and other industry participants are not convinced that the impacts have been sufficiently identified and analyzed. That said, rather than taking such costly and uncertain approach, we believe a minimum trading increment of \$0.001 (one-tenth of one cent) per share across different trading centers would be appropriate, whether applied to trading generally or to orders



generated by retail investors. This increment is already commonly provided by exchange programs that offer liquidity to retail investors, but those programs are rarely accessed, in part because Rule 612 effectively prevents markets from displaying orders in increments other than one cent. Therefore, it would be important to couple the setting of the trading increment with the ability for market centers to compete in offering effective opportunities for retail and institutional investors to meet at the most mutually beneficial price.

### **Reducing the Access Fee Cap**

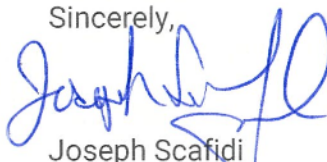
The existing fee cap under Rule 610 of \$0.003 per share for stocks priced at \$1 or more is outdated and runs counter to the interests of long-term investors. Since 2005, innovation and market forces have worked to drive down the costs to process trades and data and reduce spreads and commissions. But because of the existing “cap,” the costs to access exchange quotes have stayed unmoved, with the bulk of all trades to access liquidity stuck at this maximum level. This artificially inflates the trading costs of institutional investors who often have the need to access displayed quotes immediately. Also, as noted before, it has led exchanges to devise increasingly complicated fee schedules with multiple rebate “tier” levels. In effect, the result is to transfer an overwhelming proportion of the fees collected to a limited number of trading firms in the form of rebates. This is both inequitable and it helps to motivate investors to seek liquidity on markets other than on registered exchanges.

A reduction in the access fee to \$0.001 (one-tenth of one cent), which is largely aligned with the Commission’s proposal, is warranted and would deliver immediate benefits to investors by reducing costs to access liquidity and the perverse incentives created by the rebate system. In addition, we suggest that the Commission consider fees charged and rebates paid to be based on the characteristics of the order at the time of the trade, not the party submitting it or volume thresholds. We strongly favor a single, consistent standard, rather than multiple caps tied to different tick sizes, which would create unnecessary complexity. By definition, a cap is meant to establish a single outer limit, not a schedule that pegs different access fee levels for different categories of securities.

### **Conclusion**

We commend the SEC’s efforts to update Regulation NMS to better meet its intended goals, with the benefit of extensive experience with the existing rules. Particularly on the issues of tick and trading increments and access fees, striking the right balance can pay great dividends for the long-term investors the rules were designed to serve.

Sincerely,

  
Joseph Scafidi  
Global Head of Trading

  
Carlos Oliveira  
Head of Trading Analytics and Market Structure

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The following firms endorse the comments and opinions expressed by Brandes Investment Partners in the above letter. This endorsement is authorized by way of signature below, as an appendix to the comment letter submitted by Brandes Investment Partners referencing File No. S7-30-22


Signature:  \_\_\_\_\_

Name: ADAM CONN

Title: DIRECTOR

Firm: BAILLIE GIFFORD (OVERSEAS) LTD

The following firms endorse the comments and opinions expressed by Brandes Investment Partners in the above letter. This endorsement is authorized by way of signature below, as an appendix to the comment letter submitted by Brandes Investment Partners referencing File No. S7-30-22

Signature: 

Name: David Murray

Title: Manager Equity Trading

Firm: Boston Trust Walden

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Signature: R. P. C.

Name: RICHARD P. CANCELMO, SR.

Title: HEAD OF TRADING

Firm: BRIDGEWAY CAPITAL MGT.

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Signature: Heath Gottesman

Name: Heath Gottesman

Title: Portfolio Manager

Firm: Cougar Capital, LLC

*Thomas Duff*

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Signature:

Name: Thomas Duff

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Title: Principal/ Equity Trading

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Firm: GW&K Investment Management

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Signature: Frank Sbrochi

Name: FRANK SBROCHI

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Firm: NXG INVESTMENT MANAGEMENT

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Signature:  \_\_\_\_\_

Name: Ramy A. Saad

Title: Head Trader

Firm: Pershing Square Capital Management, L.P.

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Signature: 

Name: W. Douglas Schrank

Title: Head of Trading & Principal

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Signature:  \_\_\_\_\_

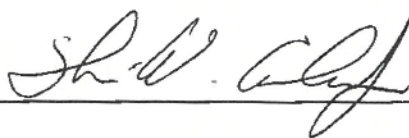
Name: Michael Warlan \_\_\_\_\_

Title: Head of Global Trading and Operations \_\_\_\_\_

Firm: Third Avenue Management, LLC \_\_\_\_\_

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Signature: 

Name: Thomas W. Coleman Jr

Title: Director of Trading

Firm: Thompson, Siegel & Wamsley LLC



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Signature:  \_\_\_\_\_

Name: John Myles \_\_\_\_\_

Title: Partner, Head Trader \_\_\_\_\_

Firm: Westfield Capital Management \_\_\_\_\_