



United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

June 27, 2024

The Honorable Gary Gensler
Chair, U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Chair Gensler,

We are writing to inquire about the finalization and implementation timelines for the Securities and Exchange Commission's ("Commission") four interrelated equity market structure ("EMS") rule proposals issued on December 14, 2022.¹ On September 26, 2023, 32 bipartisan members of Congress sent a letter requesting that the Commission adopt and implement one of those proposals, the Disclosure of Order Execution Information amendments ("Rule 605 amendments"), prior to finalizing the remaining EMS rule proposals. This timeline would allow the SEC to "benefit from the insights provided by the updated Rule 605 data." While we appreciate your attention to this concern and welcome the recent finalization of the Rule 605 amendments, we reiterate the purpose of the September 2023 request that the Commission analyze the newly updated 605 data before taking further action on any other EMS rule proposal.²

In the Rule 605 amendments' adopting release, the Commission acknowledged that Rule 605 has "provided significant insight into execution quality," but that "the utility of some of the metrics in Rule 605 reports has eroded because such metrics have not kept up with the substantial changes in equity markets since the initial adoption of Rule 605's predecessor in 2000."³ Ensuring the Commission's data collection methods keep pace with an evolving market is crucial for its ability to regulate and assess equity markets accurately.

The Rule 605 amendments made several changes that will improve the accuracy of the data used to measure order execution quality for investors. For example, the adopting release cites estimates that the amendments' inclusion of size improvement information would more than double Rule 605 price improvement statistics.⁴ However, as explained by SEC Commissioner

¹ The Commission proposed four rules: 1. Disclosure of Order Execution Information Rule (Rule 605 proposal), 2. Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders (Tick Size) Rule, 3. the Order Competition Rule, and 4. the Regulation Best Execution Rule.

² See Letter to Chair Gary Gensler, available at https://www.sec.gov/comments/s7-31-22/s73122-265279-635902.pdf?utm_campaign=SEC%20Agenda&utm_content=265969739&utm_medium=social&utm_source=linked_in&hss_channel=lcp-5320.

³ See Rule 605, page 261, available at <https://www.sec.gov/files/rules/final/2024/34-99679.pdf>.

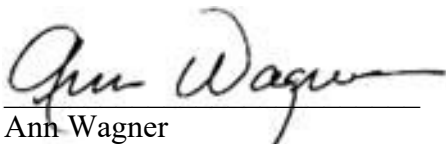
⁴ See Rule 605, page 355, available at <https://www.sec.gov/files/rules/final/2024/34-99679.pdf>.

Hester Peirce in her statement supporting the amendments' adoption and acknowledging certain challenges with them, implementing the Rule 605 amendments will change the baseline of the economic analyses underpinning related rules, including the other EMS proposals from December 2022.⁵ In fact, each remaining EMS proposal estimated its costs and benefits using the old Rule 605 data. Now that the Commission has adopted the amendments to update and improve the accuracy of Rule 605 data, the Commission should update the economic analysis in each of the other proposals accordingly.

Consequently, we urge the Commission not to finalize any additional changes to our equity market structure before properly analyzing the updated Rule 605 reports. These reports will be available following the compliance date of the amendments, which the Commission set for 18 months after their effective date of June 14, 2024. This new evaluation is necessary to prevent rulemaking based on data and information that the Commission's own rulemaking has made outdated and obsolete. Additionally, given the significant impacts that the other EMS proposals would have on retail investors, ensuring that all future changes to our equity markets are predicated on updated, accurate data is essential for the Commission to fulfill its mission of protecting investors.

The importance of U.S. equity markets and the potential for the remaining EMS proposals to dramatically change how U.S. markets operate, especially for retail investors, demands that the Commission analyze updated 605 data before taking any other action. Our constituents and millions of other Americans rely on the U.S. equity markets to save for their retirement and achieve their financial goals. Our equity markets are simply too important to warrant any unnecessary risk, especially risk that could be created by the very institution intended to protect investors and other market participants. Thus, the Commission should refrain from adopting any final rule or rules that are based on obsolete data.

Thank you for your attention to this letter. We look forward to your response.



Ann Wagner
Chairman of the Subcommittee on
Capital Markets



Andrew R. Garbarino
Vice Chairman of the Subcommittee
on Capital Markets



Frank D. Lucas
Member of Congress



Pete Sessions
Member of Congress

⁵ See Commissioner Hester M. Peirce, "Keeping Up with the Markets: Statement on Rule 605 Adoption," (March 6, 2024), available at <https://www.sec.gov/news/statement/peirce-statement-order-execution-quality-030624>.



Bill Huizenga
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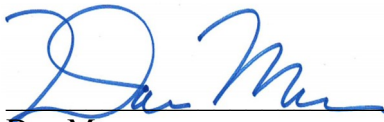
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