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Congress of the United States
House of Representatives
Washington, DC 20515–3217

July 9, 2024

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

Dear Chair Gensler,

I write to reiterate concerns about the SEC's three remaining market structure rule proposals – Regulation Best Execution, the Order Competition Rule, and Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders (together, the "Proposals") – which I believe are unnecessary and may actually harm retail investors. In particular, I am concerned that the SEC may be rushing to finalize these three rule proposals without studying the impact of the newly adopted Rule 605 amendments.[1] I am also concerned that the SEC may be ignoring recent data that directly undermines the already flimsy justification for these rule proposals, especially Regulation Best Execution and the Order Competition Rule.

You have previously described the need for the Proposals using virtuous buzzwords like "fairness," "competition," and "investor protection." For example, you have stated in support of the Proposals that "90-plus percent of retail marketable orders are routed to a small, concentrated group of wholesalers that pay for this retail market order flow. It's not clear, with such market segmentation and concentration, and with an uneven playing field, that our current national market system is as fair and competitive as possible for investors."[2] You have also alleged that retail broker-dealers that accept payment for order flow ("PFOF") are conflicted and, as a result, "[retail investors] may not be getting best execution" on their stock trades.[3]

However, recent data analyzed by market structure experts directly contradicts the allegations that a lack of competition among execution venues and alleged conflicts of interest associated with PFOF are preventing retail investors from receiving best execution on their stock trades. For example, a May 2024 Bloomberg Intelligence report finds that "retail investor spread capture is at an all-time high of 52.8%, based on our analysis of SEC 605 reports," signaling, among other things, "superior execution quality." Bloomberg Intelligence reports from other recent periods show similarly strong execution quality and increasing amounts of the spread being captured by retail investors, even with PFOF.[4] Additionally, a Bloomberg Intelligence report released on June 21, 2024 stated: "Execution quality of retail trades by wholesalers has never been better."[5] In light of recent data on execution quality and in accordance with the Administrative Procedure Act ("APA"), the SEC should revisit the justification for, and the economic analysis underlying, the Proposals and either withdraw or re-propose them.

Existing SEC and FINRA rules have helped create the conditions necessary for retail investors to participate in the stock market at record levels and at historically low cost. The SEC should at all costs avoid unnecessary regulatory interventions that threaten to upend a system that the data shows already works extraordinarily well for retail investors. Please respond to the following questions no later than July 31, 2024:

1. Describe the data and analysis conducted by the SEC demonstrating that material numbers of retail investors are receiving suboptimal execution quality (worse than the National Best Bid and Offer) on the average stock trade for National Market System stocks.

2. The SEC's 2012 Guidance on Economic Analysis includes a section titled, "Support predictive judgments and clearly address contrary data or predictions." Describe how the SEC addressed contrary data, such as the data mentioned above, in the Proposal, as well as how the SEC intends to address the above data (and similar data) to the extent the Commission decides to take further action on the Proposals.

3. Describe whether you will or will not commit to analyzing a substantial body of Rule 605 data following the recent amendments to that rule before finalizing any of the three Proposals. If you will not make such a commitment, explain why and how that position is consistent with the APA and the 2012 Guidance on Economic Analysis.

Thank you and I look forward to your response.

Sincerely,

Michael V. Lawler
Member of Congress

[1] *See* American Consumer and Investment Institute (ACII) Comment Letter Re: Order Competition Rule (File No. S7-31-22); Regulation Best Execution, File No. S7-32-22;
Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, File No. S7-30-22; Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, File No. S7-12-23, (May 20, 2024), https://www.sec.gov/comments/s7-32-22/s73222-474911-1361474.pdf.
[2] "Market Structure and the Retail Investor:" Remarks Before the Piper Sandler Global Exchange Conference (Jun. 8, 2022), *available at*: https://www.sec.gov/news/speech/gensler-remarks-piper-sandler-global-exchange-conference-060822.
[3] September 15, 2021 CNBC Interview (Sept. 15, 2021), *available at*: https://www.youtube.com/watch?v=VZ0obEwpVUE.
[4] *See* May 2024 Bloomberg Intelligence report: "Aggregate retail-price improvement jumped 45% in a year to $819 million in 1Q, despite a 5% decrease in total shares executed by wholesalers. As a result, retail investor spread capture is at an all-time high of 52.8%, based on our analysis of SEC 605 reports."; November 2023 Bloomberg Intelligence report: "...the percentage of the spread captured by investors improved about 3% sequentially in 3Q."; August 2023 Bloomberg Intelligence Report: "Wholesaling

enables retail investors to capture 45.9% of the bid/offer spread, on pace to put $2.2 billion annually back into investors' pockets in 2023, our analysis shows."

[5] *See* June 2024 Bloomberg Intelligence Report