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May 2, 2023

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-29-22; Release No. 34-96493; Disclosure of Order Execution Information
File No. S7-30-22; Release No. 34-96494; Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders
File No. S7-31-22; Release No. 34-96495; Order Competition Rule
File No. S7-32-22; Release No. 34-96496; Regulation Best Execution

Dear Ms. Countryman:

Jefferies LLC ("Jefferies") appreciates the opportunity to comment on the above-referenced proposed rule changes ("the Proposals") released by the Securities and Exchange Commission ("the Commission") on December 14, 2022.[1] Jefferies is a subsidiary of Jefferies Financial Group Inc., the largest independent, global, full-service investment banking firm headquartered in the United States. We are a leader in providing insight, expertise and execution to investors, companies, and governments and have focused on serving clients for 60 years.

About Jefferies Equity Trading

Jefferies is a U.S. registered broker-dealer and equity trading firm dedicated to providing the highest quality execution to our institutional clients. In our quest to attain the best execution possible, we are continually focused on market structure and examining the myriad of ways its evolution impacts every facet of execution. The output of these analytics forms the backbone of our trading and execution platform and drives our behavior in the markets.

Overview & Recommendations

Jefferies is a strong advocate for markets that are fair, transparent, and efficient, and as such, we commend the Commission's recent efforts to modernize and improve the U.S. equity markets for the benefit of all investors. However, despite the fact that the four proposals released by the Commission were issued separately, they are bound together under Regulation NMS ("Reg NMS") and thereby inextricably linked to one another in practice. Therefore, we are concerned that a simultaneous adoption followed by an overlapping implementation schedule could produce serious unforeseen consequences that would be almost impossible to reverse should the need arise given a reversal of any sort is not built into the Proposals' design nor factored into their economic analyses.

We believe sound data is critical to effective rulemaking, particularly for proposed rules that are complex and of this magnitude. We are extremely confident in our ability to use data to analyze the various facets of our executions and the many factors that can impact execution quality, and thus, believe more sufficient data is necessary to support the broad and profound nature of this rulemaking effort. Therefore, we support SIFMA's request that the SEC provide the data used to support the economics and basis for these proposals.[2] In doing so, all participants would be afforded the opportunity to conduct an independent analysis, and having the capability to study the same data set used as the basis for these proposals, results are likely to contain valuable insight and unique perspectives in addition to what

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[1] See Securities Exchange Act Release Nos. 96494 (Dec. 14, 2022), 87 FR 80266 (Dec. 29, 2022) (S7-30-22) (Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders); 96495 (Dec. 14, 2022), 88 FR 128 (Jan. 3, 2023) (S7-31-22) (Order Competition Rule); see also Securities Exchange Act Release Nos. 96493 (Dec. 14, 2022), 88 FR 3786 (Jan. 20, 2023) (S7-29-22) (Disclosure of Order Execution Information); 96496 (Dec. 14, 2022), 88 FR 5440 (Jan. 27, 2023) (S7-32-22) (Regulation Best Execution).

[2] See Letter from Securities Industry and Financial Markets Association, File No. S7-31-22 (Feb. 8, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20156863-325026.pdf.

was initially provided by the Commission. Moreover, a robust and current data set would likely produce high-quality studies via a multi-factored approach, a method we and other commenters[3] believe is necessary to determine the appropriate course of action with respect to this rulemaking, and to ensure proposed rules can be thoughtfully designed to achieve their desired objectives and are structurally sound.

For the reasons above, we believe a more disciplined and incremental approach is necessary and recommend, as a first step, the Commission solicits input to confirm and apply industry consensus through the use of its exemptive authorities under Reg NMS to temporarily modify tick sizes and access fees. More specifically, before pursuing any further action on the four proposals, we suggest the Commission grants Exemptive Relief Pursuant to Rule 612(c) of Regulation NMS in a manner similar to that initially requested by MEMX,[4] during which the Commission can gather and analyze practical data on sub-penny pricing increments in our existing framework to help determine whether and to what degree the proposed market structure modifications are warranted.

The general terms of MEMX's initial request for exemptive relief and our recommendations are as follows.

1. Grant a Request for Exemptive Relief Pursuant to Rule 612(c) of Reg NMS to permit market participants to display, rank, and accept bids or offers, orders, and indications of interest in an increment of $0.005 in tick constrained NMS stocks that traded with an average quoted spread of $0.011 or less.
2. As a condition of relief, require any national securities exchange, national securities association, or trading center subject to Rule 610(c) limit access fees under the rule to $0.0015 for tick constrained NMS stocks as defined above.
3. Solicit industry and public input on other potential considerations for the above – e.g., significant liquidity at the NBBO – to establish consensus around implementation, expiration, and the specified terms of exemptive relief pursuant to Rule 612(c) and its conditions.
4. Suspend further action on the Disclosure of Order Execution Information, Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, Order Competition Rule, and Regulation Best Execution proposals until it can be determined whether these and other market structure changes are warranted based on sufficient data and analysis gathered during the period of relief and thereafter.
5. This approach would promote a well-informed and efficient process because it would allow for the gathering of data on sub-penny pricing increments in the current regulatory framework without the need for significant rulemaking. Importantly, this approach includes a "built-in" roll-back plan that we and other participants believe is necessary to avoid potentially harmful effects.

Exemptive Relief Pursuant to Rule 612(c) – A Measured and Disciplined Approach

We believe addressing tick sizes and access fees are of paramount priority and that this initiative ought to come first. In our view, any proposed changes to tick sizes and access fees will have a direct impact on trading, and fundamentally, trading is what will ultimately dictate the outcomes of other rules and proposals, like Rule 605 and the Commission's proposed Regulation Best Execution. Therefore, proper calibration of tick sizes and access fees is critical so that the outcome of any rule driven by trading will remain effective and live up to its intended potential.

At the same time, we recognize doing so is a complex undertaking, so rather than adopt the proposals in their current or modified forms, we recommend the Commission applies a derivation of existing industry consensus – e.g., ½-penny quoting increment and a 15mill access fee cap – through its exemptive authorities under Reg NMS to modify tick sizes and access fees now.

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[3] See Letter from T.Rowe Price, File No. S7-31-22 (Mar. 31, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20163105-333121.pdf; see also Letter from Cboe Global Markets, File No. S7-31-22 (Mar. 31, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20162799-332207.pdf.

[4] See Letter from MEMX to Vanessa Countryman, Secretary, Commission, dated Aug. 4, 2022, https://memx.com/wp-content/uploads/Tick-Size-Exemption-Request.pdf; see also Letter from MEMX to Vanessa Countryman, Secretary, Commission, dated Aug. 30, 2021, https://memx.com/wpcontent/uploads/Request-for-Exemptive-Relief.pdf.

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Reg NMS afforded the Commission the power to grant an exemption to Rule 612 unconditionally or on specified terms if deemed necessary, appropriate in the public interest, and for the protection of investors.[5] One could reasonably assume there is a need for tick size reform and would serve the public interest simply by way of the Commission's issuance of the Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders proposal. And given that need, investors and the public interest could stand to benefit sooner if the Commission were to exercise an authority it already has under Reg NMS rather than introducing significant rulemaking few are able to agree on.

<u>Optimal Tick Sizes and Access Fees are Unknown</u>

Despite conducting our own extensive analysis, we are only able to estimate what we believe optimal tick sizes should be. Data that can accurately depict what sub-penny pricing increments might look like in the current trading environment simply does not exist. And while the many views and opinions on this matter are well-reasoned and may exhibit a strong case for this initiative, past experiences and a restrictive data set serve as their basis. Said another way, absent practical data in a sub-penny quoting environment, any recommendation (including our own) around tick size reform is by and large theoretical, and thus, incapable of predicting a measurable outcome with accuracy, including the potential costs to investors.

Accordingly, the optimal access fee cap is also unknown. We acknowledge and certainly understand the views and opinions as to why the *current* relationship between the tick size and access fee cap is relevant – e.g., the access fee cap as a percentage of the tick size – but it was not the primary factor in the decision that ultimately led to setting the access fee cap at 30mills. In the Reg NMS adopting release, the Commission noted that the 30mill access fee cap was the "going rate" such that it was the maximum rate associated with most of the trading venues at the time.[6] We strongly support a reduction in the access fee cap, but given the reasoning behind what ultimately led to the current level of 30mills no longer applies, we believe sufficient data in the context of our current framework is necessary before final rulemaking can be made around this initiative.

A First Step – Grant Exemptive Relief Pursuant to Rule 612(c) With Industry Consensus of $0.005 Tick-Size for "Tick Constrained" Stocks & Lower the Access Fee Cap to 15mills

The industry has offered a multitude of opinions on nearly every aspect of the Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders Proposal. Yet despite these differing views, there is some consensus around certain elements of the proposal, namely $0.005 tick size for designated securities and a corresponding reduction in the access fee cap to 15mills in these names. This is not to say these particular levels are optimal, nor are we suggesting they be final. Rather, we believe they can serve as a viable starting point given a fair amount of consensus, which is rarely achievable, has been reached.[7]

<u>Securities Covered</u>

In the initial request for relief, MEMX found almost one thousand stocks accounting for nearly half of all volume were tick constrained such that they consistently traded with a penny spread.[8] If exemptive relief were granted under this assumption, the scope of securities involved would include a variety of names with diverse characteristics and allow for the gathering of necessary data that is current, timely, and able to be analyzed by all participants. Furthermore, an authentic and practical application of a smaller tick size and lower access fee to the current ecosystem would help test the viability of the Commission's existing approach and economic analyses, and importantly, assist in determining a more appropriate and viable tick size framework upon which further initiatives may be pursued. It is also likely that data collected would uncover areas of the current proposals that should be modified, and also, reveal potential occurrences of unintended consequences that in no way could have been foreseen but can now be avoided.

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[5] <u>See</u> Reg NMS Adopting Release, at 37553.

[6] <u>See</u> Reg NMS Adopting Release, at 37545.

[7] <u>See</u> Joint Consensus Position Letter, File No. S7-30-22 (Mar. 6, 2023), https://www.sec.gov/comments/s7-30-22/s73022-20158675-326601.pdf. <u>see also</u> Letter from Nasdaq, File No. S7-30-22 (Mar. 30, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20162299-331153.pdf.

[8] <u>See</u> Letter from MEMX to Vanessa Countryman, Secretary, Commission, dated Aug. 4, 2022, https://memx.com/wp-content/uploads/Tick-Size-Exemption-Request.pdf

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Exemptive Relief Offers the Ability to Gather Data Now With a "Built-In" Rollback Plan

As we stated previously, an important benefit of the Commission exercising its exemptive authority in this manner is that doing so would not require significant rulemaking and allow for timely implementation of some of the key elements that are already part of the Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders proposal. Consequently, the Commission would further ensure to the greatest degree possible that any future rule making initiatives around tick sizes and access fees were data-driven, sound, and designed to achieve the Commission's desired outcomes.

A second and equally important aspect of exemptive relief is it effectively includes a built-in "roll-back" plan via an expiration that would be decided upon by the Commission. In rulemaking of this magnitude, we like many others have strong concerns about the potential for unintended consequences and the difficulty to unwind any changes if it were necessary.[9] In 2001, the Investment Company Institute submitted a letter to the Commission in response to their request for comment on the effects of decimal trading and the potential for sub-penny pricing.[10] The letter expressed concern over the potential to exacerbate the negative effects on institutional trading following the move to decimalization, like the reduction in displayed quote size and depth-of-book, greater difficulty trading large institutional orders, and a reduction in the use of limit orders on exchanges, an experience validated by studies conducted by a number of National Exchanges. If exemptive relief were employed as a first step, two key elements that are already part of most trading infrastructures – i.e., tick size and access fees – could be rolled back (or even modified) if it were to become necessary, and also require fewer resources and be less costly to implement compared to the proposed rules in their current form.

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Jefferies appreciates the opportunity to comment on the Proposals and your consideration of our recommendations. If you would like to discuss our comments further, please contact Bruce Spiegler at [redacted].

Sincerely,

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cc: Gary Gensler, U.S. Securities and Exchange Commission, Chair
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9 See Letter from Securities Industry and Financial Markets Association, File No. S7-32-22 (Mar. 31, 2023), https://www.sec.gov/comments/s7-32-22/s73222-20163541-333880.pdf.

10 See Letter *available at:* https://www.sec.gov/rules/concept/s71401/tyle1.htm#P48_8044