June 1, 2023

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Dear Ms. Countryman:

U.S. equity markets are the most transparent, resilient and competitive in the world today. In addition to serving as a vibrant resource in supporting business and economic growth, these markets provide a range of vital investment opportunities for both retail and institutional investors.

With the support of the Securities and Exchange Commission ("SEC" or "Commission"), investors today enjoy narrower spreads, lower transaction costs, and faster execution speeds than ever in history. As a result, retail investors have more access to equity investments, at lower cost and with fewer constraints than ever before.

The American Consumer and Investor Institute (ACII) is a voice for today's retail investor. We advocate on their behalf for more choice and access to U.S. financial markets, products and services. ACII believes that every American has the right to participate in our financial system to build a better future for themselves and their families.

ACII is concerned that Chair Gensler's SEC is out of touch with the priorities and needs of today's retail investor. The tens of millions of retail investors who have started to participate in our capital markets over the last several years no longer value the stodgy trappings of old Wall Street, which came at a high price for those who could afford it. Today's retail investor values innovations such as commission-free investing and trading, no minimum account balances, the ability to invest using fractional shares, free educational resources and market news, and innovative, easy to use mobile technology, all of which have opened up the system to a broader group of younger Americans, customers with lower account balances, and more racially and gender diverse investors.

Unfortunately, drastic rule changes hastily proposed by the SEC would disrupt and place at risk many of the structures and consumer friendly innovations that have created opportunities for retail investors to access investment products at low or no cost. Retail investors themselves have raised the alarm about the harms they anticipate and risks these proposals pose to consumer choice, price and quality,[1] and we join them in raising these concerns.

The process that led to the adoption of Regulation NMS nearly two decades ago and helped facilitate today's highly competitive markets included rigorous academic studies, roundtables, consultation and input from a wide array of market participants. In sharp contrast, the SEC's process around the current market structure proposals lacks the comparable level of rigor and commitment to listening to a diverse group of constituencies, including retail investors, institutional investors, retail broker-dealers, market makers, and exchanges.[2] Rather than promoting change that will benefit today's retail investor, these changes will instead add complexity and cost, not to mention potentially significant unanticipated consequences.

Numerous academic research studies, as well as research conducted by market experts like SIFMA, demonstrate that given the cumulative effects of the SEC's proposals the purported benefits are likely overstated while the costs are understated. We urge the SEC to immediately halt the pursuit of these new proposals, particularly the Order Competition and Best Execution Proposals, and re-evaluate the costs and benefits of these proposed changes and whether they are required at all.

Retail Investors Risk Losing the Broad and Efficient Market Access They Enjoy Today

Today's retail investor enjoys access to a wide variety of products and platforms so that they can build a better financial future for themselves and their families. Beyond access, many of those platforms provide helpful educational programs to enable individuals to make informed decisions about their wealth.

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[1] See, e.g., Kent Haeffner Comment Letter, https://www.sec.gov/comments/s7-31-22/s73122-20160452-329064.pdf.

[2] In fact, when asked at a recent conference whether industry opposition to the equity market structure proposals concerned him, Chair Gensler replied, "No." See https://twitter.com/i/broadcasts/1mrGmkgOgoVxy?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1631409976898928640%7Ctwgr%5Ed7558385a27e424a1c28a0ce3f82d3fb9e34beb7%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.latestly.com%2Fsocially%2Fbusiness%2Fwatch-sec-chair-gary-gensler-talks-with-katleighdoherty-in-an-exclusive-interview-about-latest-tweet-by-bloomberg-4904410.html. Chair Gensler went on to apparently discount the concerns of market participants based on the misleading and irresponsible characterization that such companies are motivated solely by profit maximization, thus suggesting that these firms are not acting in their customers' interests. See id. See also Lydia Beyoud and Katherine Doherty, "SEC's Gensler Open to Trading-Revamp Tweaks After Criticism" (Mar. 2, 2023), https://www.bloomberg.com/news/articles/2023-03-02/sec-chief-says-he-s-open-to-trading-revamp-tweaks-amid-criticism. Chair Gensler appears to ignore the fact that, among other benefits, retail broker-dealers have saved their customers billions of dollars in trading commissions over the last several years, and that the current system of handling and executing customer stock trades has saved customers billions more in the form of price improvement.

As of late 2021, retail investors' share of total equities trading volume approached 25%, up from 20% in 2020 and 10-15% the preceding decade.[3] Much of this growth has been facilitated through the rise of low or no-cost broker-dealers that provide both broad market access and high-quality execution.

Those retail broker-dealers often route client orders to wholesale broker-dealers for execution—not only filling retail investor orders at better prices than those quoted on-exchange, but also executing at those better prices for more size than is publicly displayed. As evidence, a December 2022 study of trades executed on exchanges and "equivalent" trades executed through wholesalers found that wholesalers provided better execution more than 90% of the time.[4] Another study shows that retail investors receive between $20 and $30 million per month in aggregate price improvement through wholesale broker dealer execution.[5] Finally, a review of public filings shows that, on average, four of the top retail brokerage platforms – Robinhood, TD Ameritrade, E-Trade and Charles Schwab – delivered execution at or better than the NBBO more than 97% of the time in the first quarter of 2023 alone.

These are just a few important studies and data points, but the bottom line is that retail investors today have broad, low-cost access to the stock market. Under the current market structure, the benefits to retail investors are only expected to grow. Charles Schwab estimates that over the next 10 years, through price and size improvement opportunities afforded under the current market structure, the industry is positioned to provide over $120 billion of direct benefit exclusively to retail investors.[6]

The Proposed Rules Create Risks That Will Harm Retail Investors

SEC Chairman Gensler has said that the changes the Commission is pursuing will "promote competition for the orders of individual investors." We disagree. The new rules proposed by the SEC related to Order Competition and Best Execution in particular are a threat to the environment that has benefitted the retail investor for two primary reasons: (1) the rules would subject many retail orders to order-by-order auctions, introducing an experimental model that market participants handling these retail orders will be obliged to follow and (2) the changes would most likely increase the cost to retail investors.

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[3] See The Rise of Retail Traders | BNY Mellon Wealth Management.

[4] See Robert Battalio & Robert Jennings, "Why Do Brokers Who Do Not Charge Payment for Order Flow Route Marketable Orders to Wholesalers?" https://ssrn.com/abstract=4304124.

[5] See Thomas Ernst and Chester Spatt, "Payment for Order Flow and Asset Choice", 4a-Ernst_Spatt-Payment-for-Order-Flow.pdf (uw.edu). See also Schwarz & Jorion Comment Letter, https://www.sec.gov/comments/s7-31-22/s73122-20161902-330726.pdf.

[6] See Schwab 2022 U.S. Equity Market Structure: Order Routing Practices, Considerations, and Opportunities ("Schwab 2022 Whitepaper") at 15-16, https://content.schwab.com/web/retail/public/aboutschwab/Schwab-2022-order-routing-whitepaper.pdf.

There is no evidence that market quality is currently problematic for retail investors or that the SEC's new, unproven government trading mandates – which would require significant additional infrastructure and costs to implement – will improve pricing or execution quality.

Members of Congress on both sides of the aisle have cast doubt on the SEC proposals. At an April 2023 House Financial Services Committee hearing with Chair Gensler, Capital Markets Subcommittee Chair Ann Wagner (R-Mo.) stated that the "dramatic changes" the SEC is proposing "will cause death by 1,000 cuts to U.S. capital formation." U.S. Representative Ritchie Torres (D-N.Y.) also criticized the proposals, saying, "It strikes me as perverse to tell a broker you cannot send retail order flow to the wholesaler who's offering a better price and therefore a better execution. … If the wholesaler were offering a worse price, then I would consider that a failure of competition, and I would see the reason for your rule. But if it's offering a better price, are we fixing what ain't broken?"[7]

Importantly, by its own admission, the Commission acknowledges in its proposal that it "does not have…data that may inform the Commission on certain economic effects" and it "is unable to quantify certain economic effects."[8] Even this administration's own Department of Justice has cautioned of unintended consequences.[9]

Instead, the SEC has made sweeping assumptions about the potential impacts, including on items that are critical to retail investors like the charging of commissions. Given the rigorous analysis that went into the adoption of Regulation NMS, for example, it is both puzzling and deeply concerning that the SEC is now willing to leave the fate of the retail investor to ivory tower imagination.

In its comment letter on the proposals, Charles Schwab indicates that the Best Execution Proposal is a "solution in search of a problem." We agree. Current FINRA and MSRB rules already require retail brokers to seek best execution on behalf of their customers. As noted earlier, there is ample evidence that these rules are providing exactly that. While the SEC has authority to direct SROs to amend existing best execution rules to the extent it believes such rules are lacking, it is entirely unnecessary and a waste of taxpayer resources for the SEC to adopt a duplicative best execution rule.

The broker-dealer industry that has grown to serve so many retail investors is highly competitive. That competition benefits the retail investor in terms of product innovation, cost and execution. In addition, the competition compels a level of customer service that an exchange-driven execution model simply is not equipped to achieve. As an example, in the event of market disruptions where trading is halted or otherwise curtailed, broker dealers have

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[7] *Oversight of the Securities and Exchange Commission: Hearing Before the H. Comm. on Fin. Servs.,* 118th Cong. (2023) https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408690

[8] See Order Competition Rule, https://www.sec.gov/rules/proposed/2022/34-96495.pdf.

[9] See Comment of the Antitrust Division of the U.S. Department of Justice (Apr. 11, 2023), s72922-20164065-334011.pdf (sec.gov).

incentives to resolve those issues with their customers and have protocols in place to do so. Exchanges do not share similar, customer-driven incentives.

Another concern for retail investors is that the Order Competition Proposal may inject an unwanted stream of risk and uncertainty into a well working system. Customers could see increased costs because the built-in delay in the auction process could allow prices to move *against* a customer. Increased competition itself is a dubious assumption as most of the major institutional investors have indicated that the proposed auctions are unworkable, calling into question whether they will even participate at all.[10] And perhaps spurring the greatest uncertainty of all, market makers who are currently incentivized to execute all customer trades from retail broker-dealers will have no requirement to take on unprofitable orders in the new auctions, potentially leaving customers with worse prices or unfilled orders on many trades.

Even the major exchanges, who would presumably run and potentially profit from the SEC's proposed auctions, have rightly questioned this dangerous experiment.[11] Trading today's fast, accurate and certain system for an unproven experiment that could result in slower trades with higher prices and uncertain participation is no one's idea of a better deal. It is especially not in the interest of the retail investor who just wants to complete their trade, quickly and easily, and at the advertised price or better – something they can consistently do today.

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[10] See, e.g., Vanguard Comment Letter (Mar. 31, 2023), https://www.sec.gov/comments/s7-30-22/s73022-20162952-332905.pdf, at 7 ("We question . . . whether a requirement to submit retail orders to auctions before they could be executed internally would improve outcomes for retail investors[.]"); Blackrock Comment Letter (Mar. 31, 2023), https://www.sec.gov/comments/s7-32-22/s73222-20163995-333998.pdf, at 12-13 ("The complexity and highly prescriptive nature of qualified auctions, where every element from execution priority to auction duration has been rigorously stipulated is of primary concern to us. A regulatory framework which is too rigid stifles innovation and inhibits the ability of trading venues to create market solutions for retail orders. It also presumes that qualified auctions are the ideal mechanism for fostering competition and trading opportunities with a greater number of market participants. *Many investment firms are likely to find it difficult to interact with qualified auctions which expire in fractions of a second or overlap in duration when multiple retail orders for the same security are received concurrently.*") (emphasis added); T Rowe Price Comment Letter (Mar. 31, 2023), https://www.sec.gov/comments/s7-32-22/s73222-20163106-333125.pdf , at 1 ("Given institutional vehicles' significantly greater share of individuals' 'wallets' and the high likelihood the Proposals would hurt institutional trading, the Proposals' unproven ideas for making markets better for self-directed individuals are likely to produce more harm than good for the same individual investor base."), 3 ("Additionally, if tick sizes are addressed appropriately and access fees are significantly lower, why would there be need for an auction requirement?"); State Street Comment Letter (Mar. 30, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20162728-332114.pdf, at 5 ("For retail investors, the execution quality they receive could deteriorate in less actively traded securities in the event that liquidity providers opt not to support all securities in the auctions. This could result in more liquidity gaps, volatility halts, and poor execution outcomes.").

[11] See, .e.g, NYSE, Schwab, and Citadel Comment Letter (Mar. 6, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20158677-326603.pdf, at 2 ("We recommend withdrawing [the Order Competition] proposal for a number of reasons, including the unprecedented nature of requiring certain market participants to utilize a specific trading protocol."); NASDAQ Comment Letter (Mar. 30, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20162299-331153.pdf, at 3 ("[T]he SEC risks too much by solely focusing on qualified auctions, as there is no silver bullet solution to the problem it identifies.").

The Proposed Rules Risk Rolling Back Progress Made in Correcting Historical Inequities in Finance and Investing

Finally, one of the greatest benefits of market modernization has been the unprecedented inclusion of a broader group of younger, lower income and more racially and gender diverse investors in investing and wealth building. These changes have been a revolution in economic opportunity and equity, and are a full throated private sector alignment with the administration's attempt to address historical inequities across our economy.[12]

Instead, these proposed rules create the dangerous risk of rolling back the clock and crushing the very innovations that have opened up today's markets to millions of new and diverse investors. In fact, ACII fears that the SEC's experimental rule proposals will have a disproportionate impact on historically underserved communities. We share the concern voiced succinctly by the National Association of Securities Professionals that "the SEC's proposals could result in a lack of access to the stock market for underserved demographics which could negatively impact the ability of these individuals and communities to build wealth and, in turn, further widen the existing diversity gap in investing."[13]

Ultimately, the SEC's Best Execution and Order Competition proposals represent a thinly veiled attempt to achieve Chair Gensler's primary policy (or political) goal in this rulemaking effort: to replace the business model many broker-dealers have successfully used for decades to provide customers increasingly high-quality, low-cost investment opportunities with a nostalgic, centralized exchange model similar to the one that for generations kept millions of Americans out of the market altogether.

Over the past several decades, retail investors have benefited tremendously from increased market access, at lower costs and with enhanced service levels. As structured today, we believe competitive forces will drive continuing market evolution for the benefit of individuals who are seeking to build their financial future. We urge the SEC to halt its pursuit of fundamental changes to market structure that would reverse much of the progress that has been made.

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[12] See, e.g., FINRA Report, "Investing 2020: New Accounts and the People Who Opened Them", (Feb. 2021), https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf; Aaron Brown, "Stock Investors are Younger and More Racially Diverse", Bloomberg (Sept. 21, 2020), https://www.bloomberg.com/opinion/articles/2020-09-21/stock-investors-are-younger-and-more-racially-diverse.

[13] NASP Comment Letter (Feb. 28, 2023), https://www.sec.gov/comments/s7-31-22/s73122-20158251-326339.pdf.