

March 30, 2023

By Electronic Submission

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington DC 20549

Re: File No. S7-32-22; Release No. 34-96496; Regulation Best Execution

Dear Ms. Countryman,

We submit this letter on behalf of The MITRE Corporation (“MITRE”) in response to this equity market structure proposal, which was a focus of the Securities and Exchange Commission (the “Commission”) Open Meeting on December 14, 2022. With MITRE’s mission to solve problems for a safer world, we applaud the commitment by market regulators and participants alike to ensuring that the U.S. equities market remains the most liquid, efficient, and competitive in the world. This commitment strengthens the U.S. economy and secures the future for all Americans and our allies.

MITRE was one of the first in the scientific community to measure market inefficiencies at the scale now being identified by the Commission. Below, we provide a short list of recommendations informed by MITRE’s related research. In closing, MITRE welcomes the opportunity to partner both with the Commission and market participants to explore and implement these recommendations as well as those we identify collaboratively.

Respectfully,

/s/ Kevin B. Toner
Managing Director
MITRE

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About MITRE

MITRE is a not-for-profit company that works in the public interest to tackle difficult problems that challenge the safety, stability, security, and well-being of our nation. We operate multiple federally funded research and development centers (FFRDCs); participate in and lead public-private partnerships across national security and civilian agency missions; and maintain an independent technology research program in areas such as artificial intelligence, intuitive data science, quantum information science, health informatics, policy and economic expertise, trustworthy autonomy, cyber threat sharing, and cyber resilience. MITRE's 10,000-plus employees work in the public interest to solve problems for a safer world, with scientific integrity being fundamental to our existence. We are prohibited from lobbying, do not develop nor sell products, have no owners or shareholders, and do not compete with industry. Our multidisciplinary teams (including engineers, scientists, data analysts, organizational change specialists, policy professionals, and more) are thus free to dig into problems from all angles, with no political or commercial pressures to influence our decision making, technical findings, or policy recommendations.

Over the past several years, MITRE has provided unbiased, trusted advice to multiple federal agencies and U.S. policymakers who seek to better understand rapidly changing technology developments across the full spectrum of capital markets. We have developed partnerships on key topics with industry, academia, and the nonprofit sector to understand, research, and develop capabilities—for example, the development of market-scale models and analytics. MITRE has demonstrated its capacity as a convener by bringing together the industry, government, and nonprofit sectors to share insights and deepen a collective understanding of policy goals, challenges, and the current state of technology developments in order to gain a more holistic view of how the government and industry should tackle the many challenges in the capital markets ecosystem. Specifically, over the past two years, MITRE hosted prominent regulatory, industry, and academic stakeholders for a technical exchange focused on “Ensuring U.S. Leadership in Digital Assets,” facilitated discussions between federal regulators and national security professionals identify synergistic missions securing the U.S. financial system, and contributed technical expertise to a number of government-hosted exchanges focused on global resiliency and competitiveness.

Introduction

On December 14, 2022, the Commission held an open meeting to consider a full agenda, including four rule proposals to revisit equity market structure. Regulation Best Execution (“RegBestEx”) serves a central role amongst those four proposed rules introduced at the December meeting. Therefore, we focus our attention here on RegBestEx.

With many facets to RegBestEx, we provide here only a brief summary of the proposed rule. RegBestEx resembles existing rules elsewhere, requiring brokers to establish and maintain written policies and procedures to assess execution quality and routing orders from retail investors. We make particular note that in public comments relating to RegBestEx, Chair Gensler recently referred to the National Best Bid and Offer (“NBBO”) as a “faulty measuring

rod”¹ to assess Best Execution. We highlight that here since MITRE was the first in the scientific community to identify similar shortcomings with the NBBO and the associated market inefficiencies which result,² and MITRE recently confirmed those initial findings with a longitudinal study of market inefficiencies.³ MITRE would welcome the opportunity to review these and related studies with Commission leadership.

During the Commission’s open meeting in December, Commissioner Peirce called for “voluntary experiments”⁴ while discussing the Commission’s Best Execution mandate. Commissioner Peirce advocated that such experiments could possibly achieve similar objectives for the SEC without mandating a prescriptive solution. MITRE concurs with this recommendation from Commissioner Peirce and proposes a framework by which to organize, shape and execute voluntary experiments in partnership with regulators, industry, and academia.

Center for Financial Innovation

Moving forward via these experiments presents opportunities and challenges. The U.S. financial system is both dynamic and complex; and filled with regulatory and competitive relationships. As part of its mission to perform science in the public interest, MITRE created the Center for Financial Innovation (“CFIN”). Our vision for CFIN is to be an objective, science-based center for the analysis of the financial system. The National Market System serves as a cornerstone of the CFIN research program.

Leveraging MITRE’s long history of objective analyses and data safeguarding, members of CFIN (*e.g.*, public and private companies, regulators, and academic institutions) will be able to share data, perform analyses, direct studies and shape experiments in a secure, noncompetitive forum to inform regulation and business practice. MITRE has established and led similar consortia in other industries, such as the aviation industry (www.asias.faa.gov), the ground transportation industry (<https://www.nhtsa.gov/parts-partnership-for-analytics-research-in-traffic-safety>) and cybersecurity in the private sector (<https://mitre-ingenuity.org/cybersecurity/attack-evaluations/>).

Moreover, MITRE is well suited to serve in this role as the central hub of CFIN. The

¹ Problem with John Stewart, “SEC Chair Gary Gensler Answers Your Questions,” October 12, 2022. <https://www.youtube.com/watch?v=7aTD9Ybv2E>.

² Tivnan, Brian F., et al. "Fragmentation and inefficiencies in US equity markets: Evidence from the Dow 30." *PLoS One* 15.1 (2020): e0226968.

Ring IV, John H., et al. "Scaling of inefficiencies in the US equity markets: Evidence from three market indices and more than 2900 securities." *arXiv:1902.04691* (2019).

Podkul, C. “Brief Price Gaps in Stocks Cost Investors \$2 Billion a Year.” *Wall Street Journal*, 15 Feb 2019, p. B10.

³ Van Oort, Colin M., et al. "Ecological and Coevolutionary Dynamics in Modern Markets Yield Nonstationarity in Market Efficiencies." *Complexity* (2022).

⁴ SEC Open Meeting Agenda, 14 Dec 2022. <https://www.sec.gov/os/agenda-open-12142022>. Part 2 video from SEC Open Meeting on 14 Dec 2022: <https://www.youtube.com/watch?v=N0stDLkwBF0&t=2015s>.

Federal government has leveraged MITRE's science and engineering expertise for more than 60 years. MITRE maintains a non-profit status and an independence from both the Federal government (*e.g.*, MITRE is not a regulator, not subject to the Freedom of Information Act, nor subject to the Federal Advisory Committee Act) and the population of market participants. For more information about CFIN, please contact us at: cfin@mitre.org.

Overarching Recommendations

In closing, MITRE strongly recommends that the Commission pursue voluntary experiments in collaboration with other regulators, industry, and academic partners. In pursuit of this, MITRE invites the Commission to engage with CFIN to identify, shape and execute such experiments.