

March 30, 2023

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

Via E-Mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: Proposed Regulation Best Execution; Release No. 34-96496; File No. S7-32-22; RIN 3235-AN24**

Dear Ms. Countryman:

MarketAxess Holdings Inc. (“MarketAxess”) appreciates the opportunity to provide the Securities and Exchange Commission (“SEC” or “Commission”) with our comments regarding proposed Regulation Best Execution under the Securities Exchange Act of 1934 (the “Proposed Regulation”).<sup>1</sup> MarketAxess operates the leading institutional electronic trading platform for corporate bonds and other fixed income securities. Through its registered broker-dealer, MarketAxess Corporation, and its global affiliates, more than 2,000 firms traded a record \$8.4 trillion of U.S. investment-grade bonds, U.S. high yield bonds, emerging market debt, Eurobonds, Treasuries, and other fixed income securities on the MarketAxess platform in 2022. MarketAxess’ Open Trading™ marketplace is regarded as the premier all-to-all trading solution in the global credit markets, creating a unique liquidity pool for the broad range of credit market participants.

### I. **Background.**

In general, the Proposed Regulation would establish a best execution standard for broker-dealers, and would require them to establish, maintain, and enforce written policies and procedures reasonably designed to comply with that standard. Among other things, with regard to institutional customer transactions, these policies and procedures would be required to address how the broker-dealer would: (1) determine the best market for customer orders by assessing reasonably accessible and timely pricing information and opportunities for price improvement, and (2) identify material potential liquidity sources and incorporate these sources into its order handling practices. The Proposed Regulation also would require broker-dealers to review the execution quality of their customer orders at least quarterly, review the overall effectiveness of their best execution policies and procedures on an annual basis and report the results of such review to their board of directors (or equivalent governing body).

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<sup>1</sup> See 88 Fed. Reg. 5440 (January 27, 2023) (the “Proposing Release”). The Proposed Regulation is comprised of three proposed rules, Proposed Rule 1100 (relating to the best execution standard), Proposed Rule 1101 (relating to required policies and procedures), and Proposed Rule 1102 (relating to annual report requirements).

## **II. Discussion.**

### **A. General.**

Although MarketAxess believes that the duty of best execution serves as the foundation of the relationship between a broker-dealer and its customers, MarketAxess has serious concerns regarding the adoption of the Proposed Regulation as written. Broker-dealers are already subject to best execution obligations under FINRA and MSRB rules.<sup>2</sup> Further, unlike these rules, the Proposed Regulation does not specifically address the nuances of achieving best execution in the fixed income markets.<sup>3</sup> If the Commission nevertheless proceeds with the Proposed Regulation, MarketAxess believes it should be advanced in a manner that reflects the evolution of the fixed income market structure and the growing use and benefits of all-to-all electronic fixed income trading platforms.

As the Commission noted in the Proposing Release, the scope of the duty of best execution must evolve as changes occur in the market that give rise to improved executions for customer orders.<sup>4</sup> As these changes occur, broker-dealers must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices.<sup>5</sup>

The innovations made by sophisticated electronic fixed income trading platforms in recent years have provided market participants with the ability to use a variety of trading protocols to access a broad cross-section of competing liquidity providers in a cost-effective manner. In our view, these innovations permit market participants to realize the efficiencies provided by the consolidation of trading interest without sacrificing the benefits that arise from competition across different liquidity providers, and have resulted in lower trading costs, increased price improvement opportunities, and more certainty of execution. Accordingly, we believe that the Commission should provide a presumption of compliance with Proposed Rule 1100 for broker-dealers whose policies and procedures incorporate the use of an all-to-all electronic fixed income trading platform that operates in the manner described below when accepting an order for handling and execution.

### **B. The Proposed Regulation Should Acknowledge the Benefits Provided by the Use of All-to-All Fixed Income Trading Platforms.**

Proposed Rule 1101 would require broker-dealers' policies and procedures to address how they will identify markets that may serve as material potential sources of liquidity and incorporate these sources into their order handling practices.<sup>6</sup> As the Commission explained in the Proposing

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<sup>2</sup> See FINRA Rule 5310 and MSRB Rule G-18.

<sup>3</sup> See FINRA Rule 5310, Supplementary Material .03. See also FINRA Regulatory Notice 15-46, Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets (November 20, 2015) ("Notice 15-46"). While the Proposing Release acknowledges that the manner in which a broker-dealer satisfies its best execution obligations may vary between the equity, options and fixed income markets, the Proposing Release does not discuss this matter in more detail.

<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005).

<sup>5</sup> Id.

<sup>6</sup> Although the Proposed Rule would exempt transactions where an institutional customer initiates an RFQ and executes against a broker-dealer's quote, the Proposed Rule would apply to the extent a broker-dealer accepts an order for handling and execution.

Release, broker-dealers could consider a number of markets when identifying material potential sources of liquidity, such as ATS and non-ATS electronic trading systems, RFQ systems, auction mechanisms and interdealer brokers.

The fragmentation of the fixed income market has historically resulted in inefficiencies for market participants who have had to manage multiple connections across different liquidity pools, which gave them a restrictive view of prices and market depth. The all-to-all trading solution provided by MarketAxess' Open Trading™ marketplace, for example, resolves this problem by creating a broad liquidity pool that includes investment managers, global dealers, regional dealers, and specialist market making and proprietary trading firms. Unlike other types of platforms, all-to-all platforms do not exclude or limit any class of persons from acting as liquidity providers. By consolidating the trading interest of over 1,700 credit market participants in a single liquidity pool, the Open Trading marketplace improves the ability of both broker-dealers and institutional investors<sup>7</sup> to find natural and opportunistic matches, move orders more efficiently and achieve significant increases in execution quality and price improvement. In addition, this marketplace encourages a broad cross-section of market participants to act as liquidity providers, thus significantly expanding trading opportunities for market participants.

Proposed Rule 1101 also would require broker-dealers' policies and procedures to address how they will ensure that they can efficiently access the material potential liquidity sources that they have identified. Market participants that utilize Open Trading, for example, have access to a wide range of electronic trading protocols, such as anonymous and disclosed RFQ, live order book, session-based trading, and portfolio trading solutions, which optimizes their ability to access potential counterparties in the deepest liquidity pool of institutional investors in the world. The Open Trading solution also provides market participants with access to real-time and historical pricing data, liquidity scoring metrics and algorithmic trading functionality that maximizes their ability to efficiently access this broad liquidity pool.

In our view, the purpose of Proposed Rule 1101 is to ensure that broker-dealers adopt policies and procedures which address how they will have access to the information and trading mechanisms that they need in order to satisfy their best execution obligations. As discussed above, the Open Trading solution provides broker-dealers with the tools that they need to satisfy this requirement in a cost-effective and efficient manner. Therefore, if the Commission adopts the Proposed Regulation, we believe that it should revise Proposed Rule 1100 to provide a presumption of compliance thereunder for broker-dealers whose policies incorporate the use of liquid all-to-all trading platforms.<sup>8</sup> Further, such action would be consistent with the

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<sup>7</sup> We note that institutional investors typically send trading inquiries directly to their traditional broker-dealer counterparties on a disclosed basis while simultaneously accessing additional counterparties on an anonymous basis.

<sup>8</sup> For example, the Commission could provide guidance in the adopting release that provides a presumption of compliance with Proposed Rule 1100 if: (1) a broker-dealer accesses an all-to-all trading platform that is sufficiently liquid; (2) the broker-dealer reasonably believes it is obtaining the best price based on an analysis of available market data for the security and/or other comparable securities; and (3) the broker-dealer does not have reason to believe that a better price is available elsewhere. For this purpose, a determination of sufficient liquidity could be based on the number of active participants on the platform, the extent to which there is active trading interest in a

Commission's goal of making the benefits of electronic fixed income trading platforms more widely available.<sup>9</sup>

C. The Commission Should Confirm that Electronic Fixed Income Trading Platforms Are Exempt From Proposed Rule 1100 if They Do Not Act as Agent or Accept Orders for Handling and Execution.

Proposed Rule 1100 would exempt a broker-dealer from the best execution standard when another broker-dealer routes a customer order for execution against its quote or when an institutional customer, exercising independent judgment, executes an order against its quote.<sup>10</sup> As noted in the Proposing Release, these exemptions distinguish between a broker-dealer that is acting solely as the buyer or seller of securities (which would be exempt from Proposed Rule 1100) from a broker-dealer that is accepting order flow from another broker-dealer or institutional customer for the purpose of facilitating the handling and execution of those orders (which would not be exempt from Proposed Rule 1100).

Under the MarketAxess Open Trading protocols, MarketAxess Corporation conveys the trading interest communicated among Platform participants in its own name in order to preserve anonymity between the parties. After a trade is agreed, MarketAxess Corporation is interposed as the counterparty to the buyer and seller on a matched principal basis in order to ensure that anonymity is preserved throughout the settlement process.

As the Commission noted in the Proposing Release, “[a] broker-dealer’s duty to seek to obtain best execution of customer orders derives, in part, from the common law agency duty of loyalty, which obligates an agent to act exclusively in the principal’s best interest.<sup>11</sup> Thus, when an agent acts on behalf of a customer in a transaction, the agent is under a duty to exercise reasonable care to obtain the most advantageous terms for the customer.”<sup>12</sup> MarketAxess Corporation is neither acting as agent nor accepting orders for handling and execution when its activities are limited to relaying information between market participants on an anonymous basis. Instead, it is merely acting as a conduit between trading counterparties who retain full control over their execution decisions.

It is not clear whether the exemptions specified in Proposed Rule 1100 are sufficiently broad to include MarketAxess Corporation and other electronic fixed income trading platforms, including platforms that are registered as ATSSs, when they act in the manner described above.

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particular asset class, and whether the number of transactions effected on the platform represents a significant percentage of TRACE reportable trades, or any combination of the foregoing.

<sup>9</sup> See Gary Gensler, “The Name’s Bond.” Remarks at City Week (April 26, 2022), available at <https://www.sec.gov/news/speech/gensler-names-bond-042622>.

<sup>10</sup> Proposed Rule 1100 would also provide a third exemption from the best execution standard for a broker-dealer or a natural person who is an associated person of a broker-dealer, when the broker-dealer receives an unsolicited instruction from a customer to route that customer’s order to a particular market for execution and the broker-dealer processes that customer’s order promptly and in accordance with the terms of the order.

<sup>11</sup> See Proposing Release at note 254.

<sup>12</sup> Id.

However, it seems clear that Proposed Rule 1100 is not intended to apply to them under these circumstances. In order to resolve any uncertainty on this matter, we respectfully request that the Commission revise Proposed Rule 1100 to provide more clarity on this matter.

D. Limit Orders for Fixed Income Securities.

As the Commission considers whether to adopt the Proposed Regulation, it may also want to examine what other steps it could take to enhance the regulatory framework concerning the duty of best execution. In this regard, we note that SEC Rule 604 generally requires dealers to display customer limit orders for NMS securities that are priced better than the dealer's quote or that add to the size associated with such quote unless these orders are executed upon receipt. As the Commission noted when adopting this Rule, this display requirement is based on transparency and agency concerns, including a broker-dealer's obligation to provide its customers with best execution, and is intended to narrow spreads, improve price discovery, and increase market depth.<sup>13</sup>

While the market structure for fixed income securities differs from that for NMS securities, we note, as the Commission and others have previously observed, that the electronic fixed income markets now have more active limit order books and robust data feeds and offer all-to-all trading functionality that provides broad transparency of orders to all significant institutional market participants. Therefore, the Commission may want to use this opportunity to consider whether to harmonize the best execution requirements across the fixed income and equity markets by adopting a similar rule for the handling of customer orders in fixed income securities.

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MarketAxess appreciates the opportunity to comment on the Proposed Regulation. We would be happy to discuss our comments with the Commission or its staff. If you have any comments or questions concerning this letter, please feel free to contact us.

Sincerely,



Scott Pintoff

General Counsel, MarketAxess

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<sup>13</sup> See Securities Exchange Act Release No. 34-37619A (September 12, 1996).