



August 24, 2023

VIA ELECTRONIC DELIVERY

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

RE: Proposed Rules: Order Competition Rule, Release No. 34-96495, File No. S7-31-22 (Dec. 14, 2022) and Regulation Best Execution, Release No. 34-96496, File No. S7-32-22 (Dec. 14, 2022)

Dear Ms. Countryman:

Virtu Financial, Inc.¹ (“Virtu”) respectfully submits this letter to refer the Commission to Professor Jonathan Brogaard’s July 2023 white paper² submitted in connection with the Commission’s request for comment on its Order Competition and Best Execution rule proposals. Professor Brogaard’s paper thoughtfully captures the substantial benefits of the current market ecosystem for investors, the essential function played by wholesalers, and the Commission’s failure to account for the likely harm to investors if it proceeds with its “radical redesign of equity market structure.”³ Professor Brogaard’s assessment is consistent with Virtu’s own March 30, 2023, comment letters on the same rules and Professor Craig Lewis’s analysis appended as Exhibit A to Virtu’s March 30, 2023, submission on the Order Competition rule proposal.⁴

In particular, Virtu is aligned with, and wishes to draw the Commission’s attention to the following points made by Professor Brogaard:

¹ Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu’s market structure expertise, broad diversification, and execution technology enable it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. Virtu broadly supports innovation and enhancements to transparency and fairness that increase liquidity and promote competition to the benefit of all marketplace participants.

² Available at <https://www.sec.gov/comments/s7-32-22/s73222-221579-466122.pdf> [hereinafter Brogaard Paper].

³ Brogaard Paper at 37.

⁴ Comment Letter on Behalf of Virtu Financial, Inc., Re: Order Competition Rule, Release No. 34-96495, available at <https://www.sec.gov/comments/s7-31-22/s73122-20162480-331492.pdf>; Comment Letter on Behalf of Virtu Financial, Inc., Re: Regulation Best Execution, Release No. 34-96496, available at <https://www.sec.gov/comments/s7-32-22/s73222-20164001-333999.pdf>.

- Wholesalers perform an essential function in today’s market structure. They are able to execute at competitive prices (often, midpoint or better) and “have expertise and experience in accessing liquidity pools across the national market,” which enables them to achieve order execution quality “that brokers individually could never provide their clients.”⁵ To come close, retail brokers would have to invest significantly to develop technologies and expertise, which would result in costs being passed on to investors.⁶
- The Commission’s characterization of wholesalers as anticompetitive is inaccurate. Far from operating with limited competition, “brokers can push wholesalers to compete with one another to improve how well they meet the execution needs of retail investors.”⁷ Retail brokers continually review the execution quality provided by wholesalers and enforce competition by rewarding with future order flow those wholesalers that provide the best execution. Wholesalers are therefore incentivized to, and consistently achieve, price and size improvement on marketable retail orders through internalization.⁸
- Additionally, the Commission relies on two sets of flawed analyses to establish the economic baseline from which it evaluates the impact of its proposed rules. First, Professor Brogaard establishes that the Commission’s midpoint-liquidity analysis is flawed because it simply assumes—without real economic analysis and, in particular, consideration of factors other than price—that untapped liquidity is clear evidence of the failure of best execution obligations.⁹ As Professor Brogaard concludes, “[m]idpoint liquidity could be available somewhere, but it does not mean that a broker acting in the best interest of a customer and fully meeting its duty of best execution is required to find it. As the Best Ex proposal itself points out, when brokers are searching for liquidity they should consider the dynamic between the opportunity to receive a better price and the delay in execution that could result in a worse price.”¹⁰
- Further, the Commission’s analysis comparing realized spreads between exchanges and wholesalers—which have fundamentally different motivations for providing liquidity—is likewise flawed. It incorrectly assumes that higher realized spreads for retail orders suggest higher profitability for, and less competition among, wholesalers. But realized spreads are not a good proxy for profitability as they do

⁵ Brogaard Paper at 39.

⁶ *Id.* at 13–14.

⁷ *Id.*

⁸ *See id.* at 16–18.

⁹ *See id.* at 24–30.

¹⁰ *Id.* at 28.

not account for all costs borne by wholesalers, and, importantly, do not account for differences in market conditions at the time of the trade. Ignoring these material differences creates an apples-to-oranges comparison.¹¹ Further, under the Order Competition rule proposal, the Commission incorrectly assumes that the realized spreads achieved in qualified auctions would equal those achieved on exchanges today. It fails to provide evidence that on-exchange liquidity providers would be incentivized to provide additional liquidity for retail order flow.¹²

Virtu agrees that enhancing market equity is a laudable goal. But the Commission’s proposals “assume[] a factually inaccurate worldview of the marketplace that leads it to vastly overstate the gains of proposed changes while underestimating the prospective harm to investors and market quality.”¹³ In addition, it uses flawed analyses to support tremendously consequential proposals that place investor wellbeing in jeopardy. As Virtu did in our March 30, 2023 letters, we continue to urge the Commission to consider data-driven, incremental changes so it can carefully study outcomes instead of proceeding with untested, large-scale reform.

Respectfully submitted,



Thomas M. Merritt
Deputy General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime E. Lizarraga, Commissioner
Dr. Haoxiang Zhu, Director, Division of Trading and Markets

¹¹ *See id.* at 32–36.

¹² *Id.* at 35–36.

¹³ *Id.* at 39.