January 19, 2022

Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-1090

Dear Chairman Gensler:

We write today in response to several proposed rule amendments discussed during the Securities and Exchange Commission's ("SEC" or "Commission") December 14, 2022, open meeting. We remain deeply concerned about many of these radical revisions to U.S. equity markets structure, especially given the SEC's continual failure to take a variety of appropriate rulemaking steps, including: clearly identifying concrete investor harms, conducting thorough cost-benefit analysis, providing the public with sufficient time to review and comment, and seeking advance input from the millions of everyday investors most directly acquainted with and impacted by existing market structure features.

Long-considered the global gold standard, U.S. equity markets facilitate a dynamic American economy and allow the average American working family to achieve their long-held financial goals, such as buying a house, sending their children to college, and retiring with economic security. As such, we agree with the SEC's October 2021 report[1] on equity market structure conditions, which noted that the widespread adoption of innovative technology and digital platforms by broker-dealers and investment advisers has made investing and trading in securities more accessible to a broader range of individuals than ever before.

Despite the SEC's findings, and your own strong agreement during an August 2021 Senate Committee on Banking, Housing, and Urban Affairs hearing that increased retail investor market participation is a good thing for America, it is significantly concerning that the SEC, under your leadership, is working to push forward a number of proposals which will *discourage* – not encourage – the type of competition and innovation that has revolutionized markets and benefitted investors.

Unfortunately, in recent years, you and your agency have repeatedly attacked the very mechanisms that have led to expanded opportunities for retail investors. In public remarks, you referenced supposed hidden costs and conflicts of interest associated with order routing revenue. [2] Yet, contrary to your bold assertions, multiple independent academic analyses found zero evidence that the practice leads to retail investors getting worse prices on stock trades. In fact, analysis conducted by Massachusetts Institute of Technology (MIT) researchers provided

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[1] *Staff Report on Equity and Options Market Structure Conditions in Early 2021*, October 14, 2021, https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf

[2] Anna Golubova, *SEC's Gensler talks hidden costs of retail trading, crypto regulation gaps*, September 14, 2021, https://www.kitco.com/news/2021-09-14/SEC-s-Gensler-talks-hidden-costs-of-retail-trading-crypto-regulation-gaps.html

compelling evidence that retail investors received "superior" price improvement and execution quality under an order routing system.[3] Additionally, while you've publicly supported SEC proposals to require an auction process for many equity market orders, the SEC has yet to release a detailed analysis of this proposal, nor elaborated on how this new regulation – which would require companies to build onerous, and technologically-difficult systems – would increase competition. Raising regulatory requirements to a level that only large players with consolidated market share possess the resources to meet strikes us as antithetical to any effort to increase competition. These market structure changes, among several others proposed under your leadership, do not seem to adequately contemplate the dynamic nature of increasing numerous regulatory burdens and the likely reintroduction of trading fees or other disruptions (e.g. account minimums, penalties for smaller trades, trading minimums) that would hurt investor access – especially those new to markets.

Given the potential impact of these rules, the unprecedented lack of input from stakeholders is alarming. Previous wholesale market structure reforms were conducted with extensive outreach prior to formal rulemaking. Regulation NMS, for instance, which shapes much of our modern market structure, was formally proposed after months of public engagement, public/private dialogue, concept releases, and stakeholder feedback. Subsequently, after proposals were released, the Commission continued public engagement, including holding public roundtables with market participants, and a subsequent follow-on comment period after this engagement.

In light of the grave harm that these untested and complex revisions to equity market structure rules could pose to retail investors and the U.S. economy more broadly, we request you respond to the following questions no later than **February 3, 2023**:

1. Do you believe enacting regulations that may return many extinct or near-extinct policies – such as upfront commissions, trading fees, and/or account minimums – that eat into a customer's investment returns would be a net financial benefit for retail investors?

    a. What research has the SEC conducted to show this is the case?

2. Has the SEC conducted any other analysis or collected data that would support the specific claims made in the proposed rulemaking regarding hidden costs and conflicts of interest associated with order routing revenue?

    a. Please provide an overview of this analysis and/or data.

3. Why hasn't the SEC conducted a comprehensive cost-benefit study of the four combined rules?

America's equity markets serve as an engine for opportunity, allowing average Americans to build wealth, driving our economy, and providing the U.S. with a unique economic advantage in an increasingly multipolar geopolitical landscape. Any effort to ram through hurried rulemaking without proper analysis, deliberation or consideration of downstream impacts is nothing short of

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[3] S.P. Kothari and Eric So, *Commission Savings and Execution Quality for Retail Trades*, December 2021 file:///C:/Users/RA46342/Downloads/SSRN-id3976300.pdf

regulatory malpractice. As such, we strongly urge the Commission against pursuing any changes to the existing ecosystem – which the average retail investor benefits from more than at any other point in history – without a thorough data collection process, careful consideration of retail investor input, and the public release of extensive and detailed analysis of the impacts these rules would entail.

Sincerely,

Thom Tillis
United States Senator

Bill Hagerty
United States Senator

Mike Crapo
United States Senator

Cynthia Lummis
United States Senator

Kevin Cramer
United States Senator