TRADEliance

Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

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To whom it may concern,

Thank you for extending the offer for stakeholders to contribute comment Regulation Best Execution. TRADEliance is a consulting firm with a mission to support firms in the capital markets. Our expertise and background is largely in Compliance, Operations and Trading, so we have an immense appreciation for the SEC's goals as it pertains to this proposal. However, we think there is a certain level of ambiguity that the SEC would be well served to address for industry participants through this exercise.

Clarity of Definitions

One of the biggest challenges in the regulatory landscape is navigating how the regulator drafting the proposal chooses to define certain industry nomenclature. With the introduction of several new definitions of commonly used industry terms, this proposal adds a new layer of complexity for firms.

The Commission should consider clarifying the definitions for the following terms:

- Institutional Clients
- Retail Clients
- Riskless Principal

Institutional Clients

Throughout this document, the proposal seeks input on the proper ways to define retail clients and institutional clients for the purposes of a best execution standard. However, the Commission should start by attempting to determine what population of investors they are trying to protect by implementing such a rule.

As written, proposed rule 1100 would apply to "any transaction for or with a customer, or a customer of another broker-dealer, or a natural person who is an associated person of a broker-

dealer[1]." The rule would provide exemptions for transactions for a "broker-dealer, or a natural person who is an associated person of a broker-dealer, when the broker-dealer (i) quoting a price for a security where another broker-dealer routes a customer order for execution against that quote or (ii) an institutional customer, exercising independent judgment, executes its order against the broker-dealer's quotation[2]."

As the proposal points out, there are already several existing definitions of institutional customers, including the MSRB's Sophisticated Municipal Market Professional (SMMP) or FINRA's institutional account definition[3]. In order to more properly define institutional customers, the Commission should consider conducting an analysis of the existing definitions to determine what population it wants to include with retail customers as those who should be afforded the protections proposed by these rules.

For example, the proposal states that there is a desire to include customers that meet the MSRB's definition of SMMP as it believes certain customers in this category would benefit from the protections offered by proposed Regulation Best Execution[4]." However, the proposal never truly explains how the proposal would be more beneficial to SMMP's in comparison to the existing construct or which customers meeting the definition of SMMP would benefit from this proposal.

Put more plainly, the reason that the SMMP construct exists is that there are certain customers who, by virtue of their knowledge, experience or institutional status in the market do not require broker dealers to exert the same level of diligence on ascertaining best execution (among other things). Additionally, as the proposal acknowledges in footnote 122 that when the Commission approved the SMMP standard initially, part of the consideration was to avoid the imposition of regulatory burdens if they are not needed[5]. What remains unclear is what benefit offered by the protections of this rule outweighs the additional regulatory burden of this proposal.

Additionally, the requirement for institutional customer orders to be executed against a dealer's quotation is constraining, and again the benefit of this requirement is unclear. In the event there is not a firm quote to execute against, the proposal requires a dealer to obtain additional information to execute a trade that the institutional customer has arguably already reviewed.

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[1] Regulation Best Execution, page 49.
[2] Regulation Best Execution, page 51.
[3] FINRA 4512(c) defines institutional account as the account of (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the Commission under section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.
[4] Regulation Best Execution, Page 55
[5] Regulation Best Execution, footnote 122, page 55.

These additional layers of complexity will slow down the speed of execution, potentially making the markets less efficient.

In accordance with MSRB rules, broker-dealers are expected to obtain an affirmation from SMMP customers indicating that they are exercising independent judgment in evaluating the quality of executions obtained by the dealer[6]. If a customer is willing to make that attestation, why should that not be sufficient for the purposes of defining the institutional customers that the SEC proposal is willing to exempt from their rule?

If the SEC were to adopt an MSRB-like approach to define institutional customers, this could allow broker dealers to bifurcate their customer populations into two groups – those who have submitted attestations and those who have not. This should, in theory, make it easier for firms to manage their programs given that the standards would only be different for two populations. Additionally, this construct allows for a consistent application of a standard which is easily replicated by broker-dealers across the industry, thus achieving the SEC's stated goal of creating a more consistent, level playing field. Accordingly, TRADEliance suggests that the Commission consider a) conforming its definition of institutional with those already existing, b) impose the existing construct of requiring firms to obtain a certification to verify a customer's status, and then c) allowing those customers to be exempt from the overall requirements of Regulation Best Execution.

Retail Customers

The proposal creates a level of ambiguity around the definition of retail clients. Rule 1101, as proposed, is intended to apply to any transaction with a customer, with certain exclusions for institutional clients. However, Rule 1101(b) on conflicted transactions would apply for or with a retail customer – hence introducing another "category" into consideration for order handling. The proposal defines this as "any transaction for or with the account of a natural person or held in legal form on behalf of a natural person or group of related family members[7]." The definition used in this proposal is similar to the one used in Regulation Best Interest.

While the difference is subtle, there could be a population of customers unintentionally excluded from consideration for Rule 1101(b). The way this is drafted, there could be clients who may be considered institutional, but are not exercising independent judgement, and therefore would not be afforded these protections.

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[6] MSRB Rule D-15(c)(1)(B)
[7] Regulation Best Execution, pages 102 and 103.

Instead of creating an independent definition of retail customers for section 1101(b), the Commission should consider creating two groups, broadly, for this rule. In other words, if the Commission more clearly defined institutional clients, then anyone who does NOT meet that definition would be considered retail for the purposes of this rule, and as such, afforded the purported benefits of the additional requirements for conflicted transactions. Again, the Commission should consider who they are ultimately aiming to protect with this proposal, as the proposal leaves it unclear.

Riskless Principal

In the fixed income markets, transactions are primarily executed principally. The reason for this is generally due to convenience as opposed to an effort by firms to derive a personal benefit. Yet, riskless trades are included as conflicted transactions for which firms would need to adopt stricter policies and procedures. However, in the SEC's own admission, and as is identified in this proposal, riskless principal is essentially analogous to trading on an agency basis[8].

This admission is summarized in the section of the proposal outlining the requirements for introducing brokers:

> The bond simply flows through the executing broker's account for transaction processing before ultimately being transferred to the appropriate customer…In particular, a transaction would be riskless principal if, after having received an order to buy from the introducing broker on behalf of its customer, the executing broker purchased the security from another person to offset a contemporaneous sale to such introducing broker on behalf of a customer.

The proposal uses substantially the same definition when describing riskless principal as a conflicted transaction:

> For purposes of proposed Rule 1101(b), a broker-dealer would be executing an order as "riskless principal" if, after having received an order to buy from a customer, the broker-dealer purchases the security from another person to offset a contemporaneous sale to the customer or, after having received an order to sell, the broker-dealer sells the security to another person to offset a contemporaneous purchase from the customer[9].

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[8] Regulation Best Execution, page 150, "The Commission preliminarily believes that this riskless principal transaction scenario in the corporate and municipal bond markets and government securities markets should not disqualify the initial broker-dealer from meeting the definition of an introducing broker in proposed Rule 1101(d), as the riskless principal trading in this context is analogous to the executing broker trading on an agency basis."

[9] Regulation Best Execution, footnote 182, page 100

Proposed 1101(b) does not recognize that riskless trades are "essentially analogous to agency trades." The reason for this delineation is unclear, and not fully explained in the proposal.

As the Commission intends to treat riskless principal trades as essentially agent transactions for the purposes of section 1101(d), it should also be consistent with the requirements for riskless principal trades for proposed 1101(b).

Conflicted Transactions

While TRADEliance can agree that certain conflicts exist when executing trades, the proposed changes to handling conflicted transactions is unworkable. Among other things, the expectations of a "beyond that required" standard for conflicted transactions will create challenges and unintended consequences for the broker dealer community. If, however, the Commission is determined to proceed with an additional burden relating to conflicted transactions, there needs to be significant adjustments to section 1101(b).

To start, the definition of conflicted transactions in the proposal fails to consider the nuances of the various impacted security types and instead attempts to treat all conflicts as equal. The conflicts presented by payment for order flow in the equity markets are not inherently the same as those for principal trading in the fixed income markets. In fact, many broker dealer firms who leverage principal inventories for fixed income securities are doing so to obtain best execution and may have already reviewed information "beyond that required" in order to determine that internalizing the order is in the best interest of the customer.

Perhaps more concerningly is the fact that riskless principal trades are lumped into this same category as being conflicted. As we've stated previously, riskless principal trades are generally a facilitation mechanism. The conflicts, if they exist at all, are substantially minimized. Including these trades in the definition of conflicted transactions would create unnecessary challenges for firms, whereas the trade-off for perceived benefits to customers remains unclear.

Additionally, the steps required to execute conflicted transactions are onerous and would have an outsized impact to small firms. While the proposal appears to offer an olive branch to firms who meet the definition of introducing broker AND execute trades in a riskless principal capacity for fixed income trades, it is not clear if introducing brokers would still be required to conduct extra diligence required by conflicted transactions if only executing fixed income trades in a riskless capacity. The Commission should clarify this expectation if it wants to proceed with this proposal.

Lastly, the Commission needs to offer further guidance on the concept of reviewing information "beyond that required". As suggested, many firms may already be reviewing all the information at their disposal when seeking best execution for any transaction, whether conflicted or not.

Requiring firms to review additional information only for conflicted transactions creates a bifurcation in process that will essentially create two separate models for how a firm aims to achieve best execution.

Setting a precedent such as this would potentially create a system where broker dealers would arguably obtain better execution ONLY for transactions for which they have a conflict, as the level of scrutiny required for non-conflicted transactions is less. This seems counter to the SEC's stated goal of consistency and uniformity in the industry's best execution process.

Impacts to Introducing Brokers

In reviewing the proposed impacts to introducing broker in section 1101(d), the SEC should again consider its goals with this proposal as well as who it is attempting to protect. The requirements of this section seem to ignore the outsized impact of a rule as broad as proposed Regulation Best Execution on small firms. Additionally, the proposal defines introducing broker[10] differently than what exists for FINRA and the MSRB's definitions, intentionally offering protections to a narrower group of broker dealers. The reason for this shift, again, remains unclear.

As it pertains to the definition of introducing broker, the proposal seems to ignore the fact that most introducing brokers are in existing arrangements with their clearing firms. The proposal refers to an introducing broker's "clearing firm or other executing broker" in several places throughout – but practically speaking, many of the firms impacted by this change in definition have one clearing firm with whom they work.

In many cases, introducing firms route their orders to their clearing firms based on the nature of the clearing arrangement. Introducing firms may not be afforded the visibility into the routing decisions made by the clearing firms, but more importantly, they are unlikely to have any influence on whether their firm order flow (which is likely a small piece of what the clearing firm is handling that day) can or should be re-routed to another firm for execution. Furthermore, the clearing arrangement may be written in a way that forces the introducing firm to leverage the clearing firm for execution services.

Under the current FINRA rule, for example, a firm that "routes its order flow to another member that has agreed to handle that order flow as agent…can rely on that member's regular and

[10] As defined in footnote 230 (page 145), an introducing broker is "a broker-dealer that "clears all transactions with and for customers on a fully disclosed basis with a clearing broker or dealer, and who promptly transmits all customer funds and securities to the clearing broker or dealer which carries all of the accounts of such customers and maintains and preserves such books and records pertaining thereto . . . as are customarily made and kept by a clearing broker or dealer").

rigorous review as long as the statistical results and rationale of the review are fully disclosed to the member and the member periodically reviews how the review is conducted, as well as the results of the review[11]." The addition of the requirement for firms to compare this order flow with "the execution quality it might have obtained from other executing brokers, and revise its order handling practices, accordingly" misses entirely the practical nature of the introducing firm arrangement.

One other point to highlight is that many introducing firms are structured in a way that all equity orders are executed in an agency capacity, but fixed income transactions are handled principally. The proposed definition of introducing broker includes firms who have "entered into an arrangement with an unaffiliated broker-dealer that has agreed to handle and execute on an agency basis all of the introducing broker's customer orders." The proposal includes in the definition of agency basis "fractional share trading in NMS stocks and riskless principal trading in corporate and municipal bonds and government securities." For firms that are structured to trade as agent for equity, but risk-based trading for fixed income, it is unclear what the expectation is under the confines of this proposal. Specifically, would a firm of this nature be required to uphold the various other requirements of this proposal for their equity trades solely because they trade at risk for fixed income transactions? The Commission needs to clarify this point.

Whether intentional or not, the proposed changes for introducing brokers would likely force small firms to have to make choices on whether or not to continue in this business. Forcing small firms out of business would result in less options and less competition for retail investors. TRADEliance respectfully suggests that the SEC simply adopt the existing construct already in place through FINRA and the MSRB, as that solution is manageable and workable for smaller introducing firms who are not handling order flow.

Use of Last Look

Over the past several years, financial industry regulators have spent a great deal of time analyzing the practice of last look and the potential anti-competitive ramifications of such a practice. Yet this proposal seems to indicate that broker dealers should be using this as a tool to facilitate best execution.

The proposal attempts to offer an example where this practice could be beneficial:

> Last look practices can also be beneficial to customers. For example, there could be situations where the responses received by the broker-dealer all reflect prices that the

[11] FINRA 5310 Supplementary Material .09(c)

broker-dealer has reason to believe are not reflective of the most favorable price. In these cases, last look enables the broker-dealer to evaluate those prices, determine not to execute the customer order at those prices, and either internalize the order at a price the broker-dealer believes is the most favorable price or seek additional liquidity for the customer order[12].

Pricing bonds in the market has long been a source of pride for fixed income traders who understand and add value to the credits they trade. The concept of "pennying" is not new but may be considered bad etiquette and anti-competitive. The proposal does seem to acknowledge that there could be negative impacts to this behavior[13]. Hence, it is confusing as to why the SEC would seemingly try to encourage this behavior as something that a broker-dealer could build into their policies and procedures.

Before the SEC proceeds with using this terminology so freely in the context of a sweeping rule proposal, the regulators should collectively[14] decide first if this practice is something that requires guidance or rules to govern and second, and most importantly, whether it really has a place in the industry and should be encouraged.

Possible Adverse Effects on Retail Investors

The stated goal of the proposal – to require firms to maintain consistently robust best execution practices and engage in rigorous efforts to achieve best execution – is not inherently bad. However, the outcomes that could result from this proposal could create an adverse effect on the treatment of orders for retail investors.

Increased trading costs

The elimination of Payment for Order Flow, as a considered alternative, may assist in eliminating certain conflicts impacting retail investors. However, to compensate for this, many of the firms that are leveraging the Payment for Order Flow model are currently not assessing commissions on trades. If firms were to choose to exit this business model, the end result would most certainly be an increased cost for retail investors. Arguably the Payment for Order Flow regime has done more to encourage market participation, given that investors can trade commission free, and the

[12] Regulation Best Execution, footnote 167, page 90.
[13] Regulation Best Execution, page 290: Another market practice is price matching using the best response to RFQ via "last look" or "pennying" for the purpose of internalization rather than customer benefit. Such practice would discourage market participants from submitting competitive prices because responders to RFQs are not compensated for submitting competitive quotes (i.e., selected to trade).
[14] Given that the MSRB and FINRA, along with the SEC's own Fixed Income Market Structure Committee, have issued requests for information and recommendations on this subject, all three regulators should collectively discuss the use of this practice to determine a firm position on this topic.

alternative would drive less affluent investors away from investing. It's worth noting that including Payment for Order Flow as a conflicted transaction could have this effect. Firms may choose to eliminate this practice, but the end result would be increasing costs for retail investors.

Liquidity impacts

Another negative consequence of the proposal could be the implications to liquidity, which would impact retail investors more than institutional investors, but ultimately would be a negative impact to the market as a whole.

The additional requirements set out for conflicted transactions would most certainly have an adverse impact on firms choosing, for example, to trade principally for fixed income securities. The increased compliance costs alone may have negative impacts on fees and costs that would be transferred on to the average investor. But more pointedly, some firms may choose to wholly exit the principal trading market, which actually takes away one tool that firms frequently use to deliver better execution on trades.

Possible Adverse Effects on Small Firms

Lastly, it is worth offering a comment in response to the Commission's question on staggered compliance dates. The implication and sheer burden placed on firms to implement such a sweeping regulation is massive. While the proposal assumes that many firms will not need to implement large changes to their existing programs to manage this burden, that assumption is false. For all firms, there are technology changes and system changes that will have to occur as a necessary adjustment for this rule regime. One example to offer pertains to the Commission's comments related to identifying material potential liquidity sources in the fixed income markets:

> With respect to reasonably accessible information, a broker-dealer could consider whether to obtain data from ATSs and other trading platforms, such as RFQ systems, interdealer brokers, and dealers that handle and execute customer orders, in addition to obtaining consolidated trade data in the corporate bond and municipal bond markets made publicly available through FINRA's Trade Reporting and Compliance Engine ("TRACE") and the MSRB's Real-time Transaction Reporting System ("RTRS")[15].

This obtuse comment assumes that there are little to no costs to firms to obtain access to this "reasonable accessible information." The fact is that the outsize financial impact to a small firm to obtain additional data from an ATS or other trading platform or even to pay for real time feeds

[15] Regulation Best Execution, page 75.

to FINRA's TRACE or MSRB's RTRS systems could be substantial enough to put a firm out of business.

If the Commission is determined to proceed with this regulatory regime as is, yes – staggered Compliance dates could be helpful to small firms. But the SEC will have to contend with the fact that this regime will have the effect of decreasing overall options and competition in the marketplace as a result of the rule's implementation.

As retail investors, TRADEliance feels that this proposal, as written, would significantly alter the markets for the worse. Trading would become more expensive, and competition for orders would actually decrease due to certain market participants being forced out. Additionally, the Commission still has not conducted an analysis of the aggregate impacts of the four market structure proposals collectively. There has been no information provided to the industry or investors as to what would occur if these four proposals were to go into effect at the same time, or how each of them would positively or negatively impact the other proposals. Failing to conduct this analysis does a disservice to retail investors, as the increased compliance costs of such a dramatic market structure overhaul will undoubtedly be passed on to retail investors.

We sincerely appreciate the opportunity to submit comments to the SEC regarding this proposal. Thank you for your consideration of our comments and would be happy to engage further.

Thank you,

Jesy LeBlanc and Kat Miller, TRADEliance, LLC.

Appendix I

Below is a listing of questions from the proposal that TRADEliance considered in drafting this comment letter.

III. Existing Order Handling Practices and overview of Proposed Regulation Best Execution

No comments

IV. Discussion of Proposed Regulation Best Execution

A. Proposed Rule 1100 – The Best Execution Standard

8. Do commenters agree that the proposed best execution standard should apply to natural persons who are associated persons of a broker-dealer? Why or why not?

9. Are there alternative definitions of "natural person who is an associated person" that the Commission should use instead? Is the application of proposed Rule 1100 appropriately limited to "a natural person who is an associated person" of a broker-dealer? Please explain.

12. Is it appropriate to provide an exemption from the proposed best execution standard to a broker-dealer when another broker-dealer is executing a customer order against the first broker-dealer's quote? Why or why not?

13. Is it appropriate to provide an exemption from the proposed best execution standard to a broker-dealer when an institutional customer, exercising independent judgment, executes its order against the broker-dealer's quotations? Why or why not?

14. Should the Commission define "institutional customer" for purposes of proposed Rule 1100? If so, how should "institutional customer" be defined? For example, should the Commission define "institutional customer" as any person that is a qualified institutional buyer ("QIB") as defined in Rule 144A under the Securities Act of 1933?124 Why or why not?

15. Should the Commission define "institutional customer" to include a broader set of institutional customers than the QIB definition, such as those entities that are included in the FINRA definition of "institutional account" under FINRA Rule 4512(c)?125 Please explain.

16. Should the exemption concerning institutional customers in proposed Rule 1100 be limited to situations where the broker-dealer seeking the exemption has a reasonable basis to believe that the institutional customer (i) has the capacity to evaluate independently the prices offered by the broker-dealer and (ii) is exercising independent judgment in deciding to enter into the transaction, such as is provided for in FINRA Rule 2121 concerning suitability for institutional customers? Please explain.

17. Should the Commission define "institutional customer" for purposes of the proposed exemption in Rule 1100 to be consistent with the MSRB's definition of SMMP? For example, should an institutional customer be required to make an affirmation to the broker-dealer concerning its exercise of independent judgment in evaluating the quality of execution of its transaction with the broker-dealer? Are there other affirmations relevant to best execution that should be required?126 Please explain.

18. If an institutional customer affirmation should be required, how should such affirmation be provided? Should an institutional customer be permitted to provide the affirmation to the broker-dealer orally or in writing? Should an institutional customer be permitted to provide its affirmation on a trade-by-trade basis, a type-of-transaction basis, a type-of-security basis (e.g., municipal security, including general obligation, revenue, variable rate municipal security; corporate bond, including investment grade and non-investment grade; OTC equity; NMS security), or an account-wide basis? Please explain.

20. Should the proposed exemption concerning institutional customers in Rule 1100 be limited to only certain types of securities or only certain types of trading protocols where the institutional customer is executing against the broker-dealer's quote? For example, should the exemption be limited only to transactions in fixed income securities? Should it be limited to transactions that occur through multilateral RFQ systems where the institutional customer is able to put multiple broker-dealers and other market participants in competition when soliciting quotes? Should the exemption be available to a broker-dealer that is responding to a request for quote by an institutional customer in a bilateral communication, whether over the phone or through another communication protocol? Please explain.

21. Should the Commission provide a broader exemption from the proposed best execution standard for a broker-dealer when it engages in any transaction for or with institutional customers, similar to the exemption provided to broker-dealers under MSRB Rule G-48(e) for SMMPs? Please explain why such exemption should or should not be provided.

22. If a broader exemption for transactions with institutional customers should be provided, how should the Commission define "institutional customer"? Similar to the requests for comment above, should the Commission define institutional customer as "QIB" as defined in Rule 144A under the Securities Act of 1933, an "institutional account" as defined in FINRA Rule 4512(c), or an SMMP as defined in MSRB Rule D-15? Is there another definition that would be appropriate? Please explain. Should other conditions apply to the exemption, as requested above, such as broker-dealer disclosure to the institutional customer, broker-dealer assessment of the institutional customer's ability to evaluate the transaction, and institutional customer affirmations? Please explain.

25. Should the Commission provide an exemption from the proposed best execution standard for a broker-dealer that engages in transactions for or with sophisticated market professionals in asset classes other than municipal securities? Please explain why such exemption should or should not be provided.

27. Should the Commission provide an exemption from the proposed best execution standard for transactions in municipal fund securities (which include interests in 529 college savings plans)? Should such exemption only apply to municipal fund securities that are interests in 529 college savings plans? If the Commission were to provide an exemption, should it apply similarly or differently to direct-sold and advisor-sold municipal fund securities? Please explain why such exemption should or should not be provided.

28. Should the Commission provide an exemption for mutual fund securities, such as equity and corporate bond mutual funds? Should the Commission provide an exemption for any other type of security? Please explain why such exemption should or should not be provided.

B. Proposed Rule 1101(a) – Best Execution Policies and Procedures

1. 1101(a)(1) – Framework for Compliance with the Best Execution Standard

45. Do commenters believe that the Commission should provide staggered compliance dates for proposed Rule 1101(a)(1) for broker-dealers of different sizes, if the Commission adopts proposed Regulation Best Execution? For example, should the Commission provide longer compliance dates for smaller broker-dealers? If so, should the Commission define a smaller broker-dealer as a broker-dealer that qualifies as a "small entity" under the Regulatory Flexibility Act pursuant to 17 CFR 240.0-10(c) for this purpose?151 Or should the Commission define a smaller broker-dealer in a different way? Please explain.

2. Proposed Rule 1101(a)(2) – Best Market Determination

47. Do commenters believe that proposed Rule 1101(a)(2)(i) appropriately requires a broker-dealer's policies and procedures to reflect how it will assess reasonably accessible and timely information with respect to the best displayed prices, opportunities for price improvement, including midpoint executions, and order exposure opportunities that may result in the most favorable price? Why or why not?

48. Do commenters believe that proposed Rule 1101(a)(2)(ii) appropriately requires a broker-dealer's policies and procedures to reflect how it will assess the attributes of customer orders and consider the trading characteristics of the security, the size of the order, the likelihood of execution, the accessibility of the market, and any customer instructions in selecting the market most likely to provide the most favorable price? Why or why not?

58. Do commenters believe that the Commission should provide staggered compliance dates for proposed Rule 1101(a)(2) for broker-dealers of different sizes, if the Commission adopts proposed Regulation Best Execution? For example, should the Commission provide longer compliance dates for smaller broker-dealers? If so, should the Commission define a smaller broker-dealer as a broker-dealer that qualifies as a "small entity" under the Regulatory Flexibility Act pursuant to 17 CFR 240.0-10(c) for this purpose?181 Or should the Commission define a smaller broker-dealer in a different way? Please explain.

C. Proposed Rule 1101(b) – Policies and Procedures and Documentation for Conflicted Transactions

61. Should the principal trading conflict identified in proposed Rule 1101(b) include riskless principal trades with customers, as proposed? Why or why not? If riskless principal trades should be included, should they be defined as proposed – after having received an order to buy from a customer, the broker-dealer purchases the security from another person to offset a contemporaneous sale to the customer or, after having received an order to sell, the broker-dealer sells the security to another person to offset a contemporaneous purchase from the customer – similar to the definition of riskless principal in Exchange Act Rule 3a5-1? Why or why not?

62. Should the Commission provide an exemption from the definition of conflicted transactions for certain types of riskless principal trades? For example, should the Commission exempt from the definition of "riskless principal" in proposed Rule 1101 (b)(4)(ii) trades where the broker-dealer discloses to its customer the markup or markdown that it charges on these trades on a pre-trade

basis? Please explain. If this type of exemption should be provided, what would be an appropriate method of pre-trade markup or markdown disclosure by the broker-dealer? For example, would it be appropriate for the broker-dealer to disclose a markup or markdown schedule in a readily accessible place such as its website? Please explain.

63. Alternatively, should the Commission exempt from the definition of "riskless principal" in proposed Rule 1101(b)(4)(ii) trades where the contemporaneous purchases and sales are executed at the same price resulting in a transaction with the customer that does not include any markup or markdown? Please explain. In these types of transactions, how would the broker-dealer be compensated by the customer? Would it charge a commission that is separately disclosed to the customer on the confirmation? Would the customer know the commission that it would pay the broker-dealer prior to engaging in the transaction?

64. Is the proposed definition of a "transaction for or with a retail customer" in Rule 1101(b)(4)(i), which would include accounts held in legal form on behalf of a natural person or a group of related family members, appropriate? Why or why not? Should the proposed definition be broadened or narrowed? If so, please explain how the definition should be broadened or narrowed and why.

70. Should some or all institutional customers' orders also have the protections afforded by proposed Rule 1101(b)? Please explain. If only certain categories of institutional customers' orders should also have the protections afforded by proposed Rule 1101(b), how should the Commission identify and define the institutional customers' orders that should benefit?

72. If the Commission were to apply the protections of proposed Rule 1101(b) to conflicted transactions for or with institutional customers, should it define "institutional customer" as any person that does not qualify as a QIB?189 Should it define "institutional customer" to include any person that qualifies as a QIB? Or should it define "institutional customer" to include a broader set of institutional customers than the QIB definition, such as those entities that are included in the FINRA definition of "institutional account" under FINRA Rule 4512(c)?

73. Do commenters believe there is another definition of "institutional customer" that would be more appropriate if the Commission were to apply the protections of proposed Rule 1101(b) to conflicted transactions for or with institutional customers? Please explain.

1. Proposed Rules 1101(b)(1) and (2) – Policies and Procedures for Conflicted Transactions

82. What challenges, if any, would broker-dealers encounter in implementing proposed Rules 1101(b)(1) and (2)? Please explain.

83. Do commenters believe that the Commission should provide staggered compliance dates for proposed Rules 1101(b)(1) and (2) for broker-dealers of different sizes, if the Commission adopts proposed Regulation Best Execution? For example, should the Commission provide longer compliance dates for smaller broker-dealers? If so, should the Commission define a smaller broker-dealer as a broker-dealer that qualifies as a "small entity" under the Regulatory Flexibility Act pursuant to 17 CFR 240.0-10(c) for this purpose?193 Or should the Commission define a smaller broker-dealer in a different way? Please explain.

2. Proposed Rule 1101(b)(3) – Documentation for Conflicted Transactions

87. As proposed, a broker-dealer would need to document, for its conflicted transactions, its compliance with the best execution standard, including all efforts taken to enforce its best execution policies and procedures for conflicted transactions and the basis and information relied on for its determinations that the conflicted transactions would comply with the best execution standard. What challenges, if any, would a broker-dealer encounter in complying with the proposed documentation requirements? Would such challenges differ based on the type of security being traded or the type of broker-dealer engaging in the conflicted transactions? Please explain.

88. Do commenters agree with the Commission's understanding that broker-dealers have varying degrees of documentation with respect to their best execution practices? Why or why not?

91. Should broker-dealers in the corporate and municipal bond markets and government securities markets be subject to the documentation requirements for the orders they execute on a principal basis, as proposed? Why or why not?

96. Do commenters believe that the Commission should provide staggered compliance dates for proposed Rule 1101(b)(3) for broker-dealers of different sizes, if the Commission adopts proposed Regulation Best Execution? For example, should the Commission provide longer compliance dates for smaller broker-dealers? If so, should the Commission define a smaller broker-dealer as a broker-dealer that qualifies as a "small entity" under the Regulatory Flexibility Act pursuant to 17 CFR 240.0-10(c) for this purpose? Or should the Commission define a smaller broker-dealer in a different way? Please explain.

D. Proposed Rule 1101(c) – Regular Review of Execution Quality

102. Should proposed Rule 1101(c) apply to broker-dealers that currently rely on their executing brokers to conduct such reviews, if they otherwise would not qualify as introducing brokers as defined in proposed Rule 1101(d) and discussed in section IV.E below? Please explain. Would broker-dealers that currently rely on the execution quality reviews of their executing brokers (and do not qualify as introducing brokers as defined in proposed Rule 1101(d) and discussed in section IV.E below) have the resources and

expertise to conduct the reviews required by proposed Rule 1101(c)? Would such broker-dealers have the information necessary to compare the executions received for their customers and the customers of other broker-dealers with the execution quality that could have been obtained on other markets to which they did not route customer orders? Please explain.

108. Do commenters believe that the Commission should provide staggered compliance dates for proposed Rule 1101(c) for broker-dealers of different sizes, if the Commission adopts proposed Regulation Best Execution? For example, should the Commission provide longer compliance dates for smaller broker-dealers? If so, should the Commission define a smaller broker-dealer as a broker-dealer that qualifies as a "small entity" under the Regulatory Flexibility Act pursuant to 17 CFR 240.0-10(c) for this purpose?226 Or should the Commission define a smaller broker-dealer in a different way? Please explain.

E. Proposed Rule 1101(d) – Introducing Brokers

1. Definition of Introducing Broker and Executing Broker

109. Are the proposed definitions of introducing broker (including the three proposed conditions to qualify as an introducing broker) and executing broker appropriate? If not, please explain whether and how the definitions should be more broadly or narrowly drawn, including whether certain market participants should be included or excluded from the definitions

114. Is it appropriate to require the executing broker to handle and execute all of the introducing broker's customer orders on an agency basis in order for the introducing broker to meet the definition of introducing broker under proposed Rule 1101(d)? Please explain.

117. Does the proposed introducing broker definition and the proposed approach concerning riskless principal trading appropriately capture the manner in which introducing brokers and executing brokers do business in the corporate and municipal bond markets and government securities markets? Please explain.

118. Should riskless principal transactions by an executing broker disqualify the introducing broker from meeting the definition of introducing broker under proposed Rule 1101(d)? Please explain.

119. Is the description of a riskless principal trade in section IV.E.1 above appropriate? Why or why not?

120. In contrast to the discussion of riskless principal trades in section IV.E.1 above, would it be more appropriate to require the two legs of a riskless principal trade to be executed at the same price, exclusive of any explicitly disclosed markup or markdown, commission equivalent, or other fee? For example, should a riskless principal trade for purposes of proposed Rule 1101(d)(2) be defined to mean: a transaction in which the executing broker, after having received an order from the introducing broker on behalf of its customer to buy a security, buys the security from another person as principal to offset a contemporaneous sale to such introducing broker on behalf of a customer at the same price, or after having received an order to sell, the executing broker sold the security to another person to offset a contemporaneous purchase from the introducing broker on behalf of its customer at the same price? Please explain. Would a potential benefit of this alternative definition of riskless principal transaction be that the bond transaction between the introducing broker and its customer would reflect the entire markup or markdown on the customer's trade, which would be disclosed to the customer pursuant to existing FINRA and MSRB confirmation disclosure rules?

122. Do commenters agree with the proposed requirement that there be no affiliation between an introducing broker and its executing broker in order for the introducing broker to meet the definition of introducing broker under proposed Rule 1101(d)? Why or why not?

124. The proposal would prohibit a broker-dealer from receiving any payment for order flow from its executing broker in order to qualify as an introducing broker under proposed Rule 1101(d). Currently, to what extent do introducing brokers accept payment for order flow for their customer orders from an executing broker? What are the common payment for order flow arrangements between introducing brokers and their executing brokers?

128. Do commenters believe that the approaches taken by FINRA and the MSRB with respect to the definition of introducing broker are preferable to the Commission's proposal?243 Please explain. Would an approach that is more restrictive than the FINRA and MSRB approach but less restrictive than the Commission's proposal be preferable? If so, please explain.

140. Do introducing brokers have a number of executing brokers to choose from when determining the firm they will use to handle and execute their customer orders?

142. Do commenters believe that the Commission should provide staggered compliance dates for proposed Rule 1101(d) for broker-dealers of different sizes, if the Commission adopts proposed Regulation Best Execution? For example, should the Commission provide longer compliance dates for smaller broker-dealers? If so, should the Commission define a smaller broker-dealer as a broker-dealer that qualifies as a "small entity" under the Regulatory Flexibility Act pursuant to 17 CFR 240.0-10(c) for this purpose?244 Or should the Commission define a smaller broker-dealer in a different way? Please explain.