HEALTHY MARKETS
TRANSPARENCY & TRUST

June 13, 2017

Via Electronic Mail (whiteka@sec.gov)

Hon. W. Jay Clayton, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Market Structure Suggestions

Dear Chairman Clayton:

Welcome to the Securities and Exchange Commission. We at the Healthy Markets Association are excited to work with you to continue improving the US capital markets, as well as the operations of the agency principally tasked with their oversight.

The Healthy Markets Association is an investor-focused not-for-profit coalition working to educate market participants and promote data-driven reforms to market structure challenges. Our members, who range from a few billion to hundreds of billions of dollars in assets under management, have come together behind one basic principle: Informed investors and policymakers are essential for healthy capital markets.[1] Since our launch in September 2015, we have become a leading voice for investors in the market structure debates, and have offered significant input to the Securities and Exchange Commission and its Equity Market Structure Advisory Committee.[2]

[1]To learn more about Healthy Markets or our members, please see our website at http://healthymarkets.org.

[2] Some of our relevant comments to the Commission and the EMSAC include:

- Statement of Healthy Markets Association Chairman Dave Lauer before the SEC Equity Market Structure Advisory Committee, May 11, 2015, available at: https://www.sec.gov/comments/265-29/26529-15.pdf (re reforms to 611, 605, 606, market data costs, and other matters);
- Letter from Healthy Markets Association to SEC, Feb. 26, 2016, available at https://www.sec.gov/comments/s7-23-15/s72315-18.pdf (re reforms to ATSs' disclosures);
- Statement of Healthy Markets Association Director Chris Nagy before the SEC Equity Market Structure Advisory Committee, Aug. 2, 2016, available at https://www.sec.gov/comments/265-29/26529-80.pdf (re order routing disclosure reforms);
- Letter from Healthy Markets Association to SEC, Sept. 26, 2016, available at https://www.sec.gov/comments/s7-14-16/s71416-19.pdf (re order routing disclosure reforms);
- Letter from Healthy Markets Association to SEC, Dec. 23, 2016, available at https://www.sec.gov/comments/265-29/26529-1441899-130023.pdf (re access fee pilot);

The purpose of this letter is to urge you to continue the Commission's critical, bipartisan work towards modernizing oversight of the US capital markets. Over the past several years, high profile Congressional hearings,[3] regulatory enforcement actions, a best-selling book, hundreds of press reports, and dozens of troubling market events have exposed significant cracks in the foundations of our market structure.

We understand that you are keenly focused on improving the capital formation process. We agree that the capital formation process in the US is in need of reform to continue to make the US markets the most robust and liquid in the world. That said, we believe that bolstering capital formation should be done in conjunction with efforts to improve the regulatory structure for trading of securities in the US. Put simply, your focus should not just be on issuers and financial intermediaries, but also on investors. It is only by appropriately prioritizing all of these participants that you can truly fulfill the Commission's mission.

In the pages that follow, we offer some detailed suggestions on how you might best move forward with modernizing the regulatory structure for the US capital markets. We look forward to working with you and the Commission on these important efforts in the months and years ahead. You have a big job in front of you and we hope you are successful in this critical endeavor.

Market Structure Reforms

While many areas overseen by the Commission are subject to widely diverse opinions and partisan gridlock, one area stands out as largely exempt from these challenges: market structure. Market participants all recognize the needs for some basic reforms. There is even significant consensus amongst many diverse market participants regarding the substance of most of the needed

- Letter from Healthy Markets Association to SEC, Jan. 6, 2017, available at https://www.sec.gov/comments/s7-14-16/s71416-1464340-130322.pdf (re order routing disclosure reforms); and
- Letter from the Healthy Markets Association to the SEC, Apr. 3, 2017, available at https://static1.squarespace.com/static/5576334ce4b0c2435131749b/t/58dfe79f1e5b6c817446e9b9/1491068831728/EMSACMtgLetter4-3-17.pdf (re priorities for SEC and EMSAC).

[3] See, e.g., *Conflicts of Interest, Investor Loss of Confidence, and High Speed Trading in U.S. Stock Markets*, before the U.S. Senate Permanent Subcomm. on Investigations, Comm. on Homeland Sec. and Gov't Affairs, (2014) (statements and video available at https://www.hsgac.senate.gov/subcommittees/investigations/hearings/conflicts-of-interest-investor-loss-of-confidence-and-high-speed-trading-in-us-stock-markets); see also *Computerized Trading Venues: What Should the Rules of the Road Be?*, Before the Subcomm. On Securities, Insurance, and Investment of the Senate Comm. on Banking, Housing, and Urban Affairs, (2012).

improvements.[4] We urge you to capitalize on those areas, and implement several critical enhancements.

In particular, to further the Commission's mission of combatting fraud and manipulation, and promoting more fair and efficient markets, we urge you to direct the Commission staff and work with your fellow Commissioners to:

1. Finalize enhancements to disclosures of order routing by brokers;
2. Significantly reduce or eliminate incentives that distort order routing behavior and pose conflicts of interest, including rebates and access fees;
3. Finalize enhancements to disclosures by execution venues, and particularly Alternative Trading Systems (ATSs);
4. Reduce the use of, and significantly reform, NMS Plan structures; and
5. Offer clarity on reconciling disparate provisions between the US and Europe's MiFID II regime.

We also note that the Commission is currently being urged by some market participants and their advocates to eliminate certain provisions from Regulation NMS. In this regard, we urge caution. While we agree that some provisions within Regulation NMS, such as the Order Protection Rule may lead to perverse and sub-optimal outcomes (particularly for orders of significant size, without a tailored block exemption), we also note that these protections serve an important purpose for both "retail" and institutional investors. The Order Protection Rule is one of the only explicit protections that investors have to force their brokers to demonstrate best execution. Put simply, it is the best execution backstop.

If the Commission is to consider refinements or even the elimination of these protections, we believe that the Commission must first have adequate safeguards in place to: (1) ensure brokers are still fulfilling their duties of best execution, (2) investors have the ability to verify that their brokers have fulfilled their legal obligation, and (3) investors have the ability to change their behavior in response to what they learn. ***We believe that the elimination of the Order Protection Rule and the prohibition on locked and crossed markets prior to adopting reforms to Rules 605, 606, and 610 would likely result in significant harm to investors. And even with enhanced disclosures, elimination of the Order Protection Rule without other reforms will likely shift significant burdens (and costs) onto buyside firms to ensure that they are receiving even reasonable quality executions.***

As discussed below, Healthy Markets is engaged in several key initiatives for its members, including initiatives to (1) improve ATS transparency, (2) improve order routing transparency, (3) develop standards and accreditation, and (4) improve the efficacy while reducing the burdens of investors to fulfill their best execution obligations.

---

[4] *See, e.g.*, Comments received in response to the SEC's proposed revisions to order handling disclosures. *Disclosure of Order Handling Information*, Securities and Exchange Commission, 81 Fed. Reg. 49432 (July 27, 2016), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-07-27/pdf/2016-16967.pdf. See also, Letter from SIFMA to SEC, Mar. 29, 2017 (arguing for, *inter alia*, reduction and elimination of distortive incentives, market data reforms, and NMS Plan governance reforms).

Adopt Reforms to Order Routing Disclosures

Order routing disclosure obligations are also ripe for reform. Regulatory enforcement actions and press reports have made it clear that some brokers' order routing practices have been disadvantaging their customers. Although specifics may differ between so-called "retail" and institutional investors[5], the overarching concern is the same.

Investors' orders are often routed in ways that may be worse for investors, but better for their brokers. Instead of best execution, their brokers have been providing "good enough" execution, and it's the investors that suffer. In most cases, the investors will never know that their brokers' self-interested desire to avoid a fee, or collect a payment, or hit a pricing tier at a venue, resulted in a worse execution.[6]

Last year, the Commission proposed reforming order handling disclosures, which would shed significant light on many current practices.[7] This is an important effort, and Healthy Markets has offered extensive commentary on both the need for these reforms and potential further enhancements.[8] The Commission should adopt enhanced order handling disclosures without delay.

In the meantime, many investors believe that they need to act now to protect themselves and their customers. Further, as detailed in our prior comments, the SEC's proposal, if adopted, would still be insufficient to meet all investors' needs. To fill this void, our Members have directed us to help them identify and address concerns with brokers' order routing practices. The Healthy Markets Order Routing Transparency Initiative is a multi-pronged effort to do just that. These efforts have included:

---

[5] Healthy Markets generally objects to the characterization of "retail" investors as those who trade primarily through individual, often online brokers. As numerous studies have demonstrated, these individuals often have significantly greater wealth and financial resources than those who invest predominantly through institutional investment advisers. Thus, if the Commission is truly seeking to protect "mom and pop retail," it will ensure that its regulatory regime appropriately informs and empowers institutional advisers, like those who are members of Healthy Markets, who manage the bulk of savings and retirement assets.

[6] Often, the data that would be required to accurately measure the quality of the execution is simply unavailable to the investors. Further, even in the rare instances that reasonable information may be available, investors (particularly those trading through online, discount brokers) may be unable to bring the comprehensive financial and personnel resources to bear that would be necessary to make sense of it. Worse, even if those two conditions are met, there is often limited recourse for an investor.

[7] *Disclosure of Order Handling Information*, Securities and Exchange Commission, 81 Fed. Reg. 49432 (July 27, 2016), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-07-27/pdf/2016-16967.pdf.

[8] See, e.g., Statement of Healthy Markets Association Director Chris Nagy before the SEC Equity Market Structure Advisory Committee, Aug. 2, 2016, available at https://www.sec.gov/comments/265-29/26529-80.pdf; Letter from Healthy Markets Association to SEC, Sept. 26, 2016, available at https://www.sec.gov/comments/s7-14-16/s71416-19.pdf; and Letter from Healthy Markets Association to SEC, Jan. 6, 2017, available at https://www.sec.gov/comments/s7-14-16/s71416-1464340-130322.pdf.

- Development and publication of the Healthy Markets Order Routing Questionnaire to help investors make more informed broker selection decisions;
- Development of Order Routing Disclosure best practices and working with individual firms to improve disclosure practices;
- Development and publication of unique reports related to key issues impacting broker order routing practices; and
- Offering suggestions to regulators and the public, including through regulatory comment letters.

The Healthy Markets Order Routing Questionnaire, which was released on January 2017[9], is particularly informative. This Questionnaire is a comprehensive list of more than 200 questions that can help investors better understand the practices and operations of their brokers. Again, none of this information is currently specifically required to be disclosed, yet much of it may be covered by reforms to Rule 606.

Similar to the ATS disclosure reforms, since the Commission proposed reforms, more troubling conduct has come to light. We urge you to again work with your staff and fellow Commissioners to adopt dramatically improved order routing disclosures without delay.

Reduce Distortive Incentives, or, at a Minimum, Adopt an Access Fee Pilot

We are pleased at the growing consensus of market participants that have joined our longstanding calls for the elimination or significant reduction of rebates and other distortive incentives.[10]

As we have said before, these incentives and the current pricing model:

> create a fundamental conflict of interest for brokers looking to route their customers' orders. At its worst, a broker is incentivized to route an order to the venue that pays it the most (or costs the least), instead of the venue that that has the highest likelihood of execution fostering best execution for its customers.[11]

---

[9] The Healthy Markets Order Routing questionnaire is freely available to the public at: https://healthymarkets.org/order-routing-questionnaire.

[10] See, e.g., Letter from SIFMA to SEC, Mar. 29, 2017.

[11] Letter from Healthy Markets Association to SEC, Dec. 23, 2016, available at https://www.sec.gov/comments/265-29/26529-1441899-130023.pdf (citing, *inter alia*, *Conflicts of Interest, Investor Loss of Confidence, and High Speed Trading in U.S. Stock Markets*, Hearing before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Government Affairs, June 17, 2014, *video available at:* http://www.hsgac.senate.gov/subcommittees/investigations/hearings/conflicts-of-interest-investor-loss-of-confidence-and-high-speed-trading-in-us-stock-markets).

In large part because we believed the Commission was unlikely to aggressively limit these conflicts of interest, we and others have, for years, argued for the Commission to implement a pilot program to study the impact of this conflict of interest on investors.

Healthy Markets and the EMSAC have detailed proposals to implement such a study. While we might prefer the Commission to take more aggressive action[12], if it chooses to conduct a formal study, we would urge the Commission to adopt a comprehensive pilot study without delay. In addition to the thoughtful recommendations of the EMSAC, we would also urge the Commission to (1) directly propose the pilot program, and not use the NMS Plan process; (2) simplify the study as much as possible, while also including all relevant exchanges and ATSs; and (3) offer the Canadian regulators an opportunity to coordinate a similar effort.[13]

We urge you to work with your fellow Commissioners and staff to reduce the conflicts of interest that currently jeopardize investors, and which also penalize brokers and venues who elect to "do right" by their customers.

Adopt Reforms to Regulation ATS

Amidst a slew of regulatory enforcement actions against ATS operators, in November 2015, the Commission proposed significantly expanding and improving the disclosures required of ATSs that trade NMS stocks (NMS Stock ATSs).[14]

Investors and brokers now know that many of the oldest, largest, and most well-respected execution venues have broken the law.[15] Some of these infractions have been relatively minor, while others have consisted of the ATS operator deceptively acting as the very type of predatory trader that it was publicly arguing it was protecting its customers against.

Unfortunately, as the Commission recognized in its proposed reforms to Reg ATS, the current regulatory regime is woefully inadequate to empower investors and brokers with the information they need to reasonably protect themselves.

In fact, to help fill this void, the Healthy Markets Association's members have directed us to engage in our ATS Transparency Initiative, which is a multi-pronged effort to enhance ATS disclosure practices. Our work on this initiative has included:

---

[12] A simpler approach might be to run a pilot eliminating rebates.

[13] See Letter from Healthy Markets Association to SEC, Dec. 23, 2016, available at: https://www.sec.gov/comments/265-29/26529-1441899-130023.pdf.

[14] Regulation of NMS Stock Alternative Trading Systems, 80 Fed. Reg. 80998 (Dec. 28, 2015) (the "Proposal").

[15] To date, regulators have settled cases against the operators of many of the leading equity ATSs, including Barclays, Convergex, Credit Suisse, Deutsche Bank, eBX (LeveL ATS), Goldman Sachs, ITG, Liquidnet, Pipeline, and UBS.

- Development and publication of the Healthy Markets ATS Questionnaire to help investors and routing brokers make more informed venue selection decisions;
- Creation and distribution of the ATS Transparency Index™, which provides a unique system to help inform market participants of ATSs' transparency and disclosure practices;
- Creation and distribution of the 2016 ATS Risk Assessment, which provides comprehensive comparisons and analyses of 18 leading ATSs, on issues ranging from conflicts of interest to technology risks;
- Development of ATS disclosure best practices and working with individual ATSs to improve disclosure practices;
- Development and publication of unique reports related to key issues impacting ATSs, including the Dark Side of the Pools: What Investors Should Learn from Regulators' Actions; and
- Offering suggestions to regulators and the public regarding the regulation of ATSs, including through regulatory comment letters.

The Healthy Markets ATS Questionnaire, which we publicly released in September 2015[16], is particularly noteworthy. That ATS Questionnaire arms investors and brokers with dozens of questions to ask their ATSs on issues ranging from technology to conflicts of interest to quantitative measurements of executions. Importantly, almost none of this information is currently explicitly required by Regulation ATS. Equally importantly, much of this information has been included in the Commission's proposed reforms to Regulation ATS.

Nevertheless, as we articulated in our February 2016 comment letter,[17] we encourage the Commission to revise its proposal to:

- Expand the coverage to include ATSs beyond those that trade NMS stocks;
- Consider eliminating conflicts of interest by prohibiting an ATS operator or an affiliate from trading on a principal basis in the ATS, or at a minimum, on terms any different than unaffiliated third-parties;
- Expand reporting of order and trading metrics so that market participants may better evaluate venue performance and conflicts of interest; and
- Modernize and mandate Rule 605 disclosure for all NMS ATS operators separate and distinct from any affiliated broker-dealer.

Since the Commission proposed its Reg ATS reforms nearly 18 months ago, only more troubling practices have come to light. Unfortunately, investors and brokers looking to protect themselves have been left in the terrible position of being aware of problems, but also largely unable to address them.

---

[16] The Healthy Markets ATS Questionnaire is freely available to the public at: https://www.healthymarkets.org/ats-questionnaire.

[17] Letter from Healthy Markets Association to SEC, Feb. 26, 2016, available at: https://www.sec.gov/comments/s7-23-15/s72315-18.pdf.

We hope you will direct the staff to work with you and your fellow Commissioners to adopt revised ATS reporting obligations on a bipartisan basis without delay.

Significantly Reduce the Use of NMS Plan Process and Reform NMS Plan Governance

We agree with the growing chorus of market participants and experts that argue that NMS Plan usage and governance deserves significant reforms, including through the direct inclusion of other market participants.

However, we believe that the NMS Plan process is, in its entirety, outdated. Since it was first adopted, the self-regulatory organizations (SROs) have both proliferated in number and become for-profit entities. Conceptually, we are concerned any time the regulatory apparatus is outsourced to market participants who may have their financial interests in conflict with their regulatory responsibility.

This concern is not just theoretical. The recent history with NMS Plans, particularly regarding the design and implementation of the Consolidated Audit Trail and the Tick Size Pilot, have been disappointing, at best. Administratively, these plans are burdened with an incredible amount of process and frequent delays. Substantively, these plans also have tended to show a distinct bias towards the market participants involved in their creation and adoption (the SROs).

Simply broadening participation to include more for-profit market participants (such as broker-dealers and investment advisers) may reduce concerns with the balance of the substantive results of NMS Plans, but may also lead to regulatory stagnation and generate even more conflicts of interest. It will almost assuredly not speed up or ease the administration of these plans, and will likely have the opposite effect.

We urge the Commission to reduce its outsourcing of its governmental responsibilities, and use the NMS Plan process infrequently. In that vein, we were encouraged by then-Acting Chairman Piwowar's recent remarks that an Access Fee Pilot would be done as an SEC rule, and not as an NMS Plan.

Further, to the extent that the NMS Plan process is still utilized, we encourage the SEC to significantly modify the governance to include significant voting representation of other non SRO market participants, to increase transparency of market data costs and adopt measures to prevent deadlocks and undue delays. Without these measures, we fear that NMS Plans will continue to be examples of self-regulation at its worst: self-interested, conflicted, and slow.

Offer Clarity on Reconciliation of US and EU Obligations for Best Execution and Research Payments

In the US, investment advisers are statutorily permitted to pay for research using commission dollars, if certain criteria are met. For many asset managers, particularly small and mid-sized, active managers, this is a critical element to their ongoing business. At the same time, several very

large US firms have sought—for more than a decade—to unbundle research and execution costs, and have been largely unsuccessful.

Some brokers who provide research have refused to accept cash payments for their research, while others have accepted cash payments or commission dollars.

Now, MiFID II in Europe, which becomes effective in January 2018, is pushing firms to use Research Payment Accounts or pay directly in hard dollars. This move is driving many firms to develop costly compliance regimes for research provision and payment, but also appears to be inconsistent with Section 28(e). Further, many investment advisers with US and European customers are being pressured to develop consistent policies and practices.

There are a number of thorny issues that could use regulatory input. For broker-dealers, just an acknowledgement that a cash payment may be permissible in some circumstances (i.e., broadening the no-action relief currently provided to some brokers) would resolve significant regulatory uncertainty. For investment advisers, guidance on trade and research allocations could be appropriate. For example, if a portfolio manager generates an order for one million shares of stock, and that order is to be allocated to two different funds, one subject to US rules while the other is subject to EU unbundling rules, how should the adviser allocate the trades, commission costs, and research costs? While splitting the clients into two groups may seem an easy and logical solution, this in practicality may present some challenges, as more often than not client orders are combined into blocks for purposes of seeking best execution and operational efficiency. A re-affirmation of Section 28(e), as well as guidance on compliance with the facially inconsistent regulatory regimes facing US firms would be greatly appreciated.

Don't Leave Investors Without Order Protection

At its root, Regulation NMS is designed to protect investors through a combination of disclosures, obligations, and prohibitions. Put simply, the collective ruleset is intended to ensure that investors receive best execution. And the rules are designed to work together. For example, as our Chairman explained to the EMSAC in May 2015:

> Rule 611 sought to provide strong intermarket price protections and offer greater assurance on an order-by-order basis. Rules 605 and 606 were intended to supplement Rule 611 by providing transparency into execution quality and broker order routing, thereby empowering investors to make informed decisions based on quantitative metrics.[18]

[18] Statement of Healthy Markets Association Chairman Dave Lauer before the SEC Equity Market Structure Advisory Committee, May 11, 2015, available at https://www.sec.gov/comments/265-29/26529-15.pdf.

The objective of Rule 611 is very clear: ensure investors get the best available prices. In fact, Rule 611 is one of the few protections that investors have in place which serves as a backstop on an order-by-order basis to ensure that they are receiving the best price in the market.[19]

Some market participants and their advocates are now asserting that Rule 611 should be eliminated. However, to support this argument, they have offered no specific evidence that Rule 611 has proven harmful on any grand scale, nor have we seen any specific evidence to support the assertion that it is the root cause of increased fragmentation and complexity in US markets. That said, we recognize that Rule 611, as it currently exists within the rest of Reg NMS, has several flaws and detractors.

Some have argued that Rule 611 may:

- Subsidize non-viable exchanges;
- Increase connectivity costs to the industry;[20]
- Create unnecessary complexity and intermediation, including the promotion of complex order types; and
- Maintain a one-size-fits-all market that has not served small- and mid-cap companies well.

We urge you to work with your fellow Commissioners and Commission staff to consider several refinements to Regulation NMS in addition to those identified above, including:

- Modernizing brokers' best execution obligations, including more quantitative analysis and more rigorous review of executions;
- Re-examining order handling and routing by exchanges generally, including a reexamination of complex order types; and
- Boldly exploring ideas to reduce distortive incentives, including rebates, access fees and the consolidation of multiple exchange subsidiaries.

If the Commission elects to adopt changes to Rule 611, we might consider shifting the responsibility of order protection on an order-by-order basis in Rule 611 from the exchanges back to the brokers and expanding its scope to provide protection to the displayed "depth-of-book[21]."

Rule 611 serves as an imperfect backstop to a broker's best execution obligation, by ensuring that an investor should not generally receive an execution outside the prevailing market. If the backstop is removed or weakened without the implementation of new protections, investors will be more at risk to their brokers' conflicts of interest. Brokers will remain incentivized to route orders for reasons other than best execution, but will have even less of a standard against which to

[19] Id.
[20] We note that these costs may also be up because of market venues' decisions to repeatedly increase their various data fees, which are rarely scrutinized or rejected, and the proliferation of venues.
[21] In its 2010 concept release, the Commission sought input on various provisions to promote displayed liquidity, such as expanding depth-of-book protections under Rule 611.

measure their own obligations. And investors will remain largely unable to identify and police abuses. Put simply, removing Rule 611 now will harm investors.

This is not a theoretical concern, as data suggests, brokers are already making order routing decisions based on their own bottom lines, and not necessarily the execution quality received for their customers.[22] Currently, these practices are bound by Rule 611 to result in executions that are within the market prices. This acts as a practical limit to the number of trade-throughs which is what the Commission originally sought to reduce through the adoption of the rule. It caps the amount of losses an investor could suffer from a conflicted broker. If Rule 611 is removed or weakened, then those losses would not be.

We urge you to consider all of these issues and rules collectively, as modifications to one (such as the Order Protection Rule) could have significant ramifications on other key trading rules (such as best execution). In general, we support reducing conflicts of interest and distortionary incentives, while increasing transparency.

Caution on Certain Capital Formation Initiatives

Many companies, consultants, and other experts have observed the troubling decline in IPOs, as well as the increasing concentration of capital in some of the largest firms. We agree with many of these concerns.

However, some "solutions" to the reduction in new public securities and increased concentration seem to be focused on reducing costs and perceived burdens on public corporate issuers, or oddly, making it easier to raise capital and trade privately. Interestingly, these solutions seem to ignore the comparative ease of raising private capital and the increasing tradability of restricted securities.[23] Also, none of these solutions address some of the structural advantages of larger firms (such as lower funding costs or access to advanced tax planning techniques). Ultimately, as long as firms can have multi-billion dollar valuations, thousands of shareholders, and even easy trading without ever being a "public" company, we think the current troubling trends will continue.

---

[22] For example, IEX currently occupies just 2% market share, despite consistently showing the lowest effective spread in the most symbols, as measured to the millisecond. For information on execution quality, please see "Execution Quality", BATS, *available at* http://www.bats.com/us/equities/market_statistics/execution_quality/ (last viewed Mar. 10, 2017). Similarly, TD Ameritrade has stated that it has consistently routed orders to the venues that pay it the most. Scott Patterson, *TD Ameritrade Executive Says Orders Go to Venues That Pay Highest Fees*, Wall St. Journal, June 17, 2014, *available at* https://www.wsj.com/articles/td-ameritrade-executive-says-orders-go-to-venues-that-pay-highest-fees-1403043559 (quoting TD Ameritrade testifying before Congress).

[23] Elisabeth de Fontnay, The Deregulation of Private Capital and the Decline of the Public Company, 68 *Hastings Law Journal* 445-502 (2017), *available at* http://scholarship.law.duke.edu/faculty_scholarship/3741/.

Unfortunately, further expanding the abilities of (1) companies to raise capital outside of the registration process, and (2) shareholders to trade otherwise restricted securities may expose many investors to even greater risks and costs.

The benefits to investors of publicly traded securities are numerous. Public securities often are accompanied by more robust accounting and business disclosure practices. They also are far more easily and reliably valued--an area of particular interest recently. The liquidity risks and trading costs are often significantly lower than for similarly-situated private securities. Public securities are also much more easily benchmarked, such as against the S&P 500.

Thus, as you consider efforts to spur capital formation, we urge you to lean in favor of promoting more robust public markets. This will likely mean revising the contours of the numerous duplicative, overlapping and often nonsensical collections of exemptions from registration requirements of the Securities Act.

Finally, we urge caution in reforming requirements for public markets. As corporate issuers have increasingly turned to private capital and M&A activity, businesses, Congress, and regulators have increasingly sought to "restore balance" by removing some costs and burdens associated with public offerings or being a company with publicly traded securities. Some have even proposed entirely different rules for trading shares for smaller public companies, from wider tick sizes to wholesale exemptions from Regulation NMS.

We are skeptical that these types of reforms will be effective at spurring additional IPOs or public securities. However, these efforts may negatively impact shareholders--deteriorating the quality of public offerings and the rights afforded shareholders in those offerings. We urge you to go in the opposite direction. We urge you to promote higher quality public markets with greater accountability, reliability, and price transparency.

Conclusion

Amidst growing concerns about the integrity of the U.S. capital markets, market participants, experts, and policymakers have been clamoring for the Commission to modernize disclosures and various elements of Reg NMS for years. The Commission is now well-positioned to do it and the outcome would be incredibly valuable for investors. Thank you for your consideration and we look forward to working with you to continue making the US capital markets the best in the world.

Sincerely,

HEALTHY MARKETS
TRANSPARENCY & TRUST

Tyler Gellasch
Executive Director

Cc: Hon. Michael S. Piwowar, Commissioner
Hon. Kara M. Stein, Commissioner
Heather Seidel, Acting Director of the Division of Trading and Markets